1977.

SUPREME COURT OF THE UNITED STATES.

No. 187.

ENOCH C. ROBERTS, PL'FF IN ERROR,

vs.

JAMES M. COOPER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MICHIGAN.

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Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the Judges of the Circuit Court of the United States for the seventh circuit and district of Michigan, greeting: [L. S.]

Because in the record and proceedings, and also in the rendition of a judgment in a plea which is in said circuit court, before you, between James M. Cooper and Enoch C. Roberts, a manifest error hath happened to the great damage of the said Enoch C. Roberts, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf: You are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to law and the custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of said Supreme Court of the United States, this thirtieth day of June, in the year of our Lord one thousand eight hundred and fifty-six, and of the independence of the United States the eightieth.

JNO. WINDER,
Clerk of the Circuit Court of the United States for the seventh circuit and district of Michigan.

The execution of this writ appears by the return hereto annexed.

JNO. WINDER, *Clerk.*

Citation in Error, and Affidavit of Service.

UNITED STATES OF AMERICA, *ss:*

To James M. Cooper, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Michigan, wherein Enoch C. Roberts is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment

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in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable John McLean, one of the justices of the Supreme Court of the United States, and presiding judge of said circuit court, this 30th day of June, in the year of our Lord eighteen hundred and fifty-six.

JOHN McLEAN,
Justice Sup. Court U. States.

Supreme Court of the United States.

ENOCH C. ROBERTS, plff. in error, } ngst. JAMES M. COOPER, deft. in error. }

UNITED STATES OF AMERICA,
State of Pennsylvania, western district, ss:

Geo. Watson, jr., of Pittsburgh, in the State of Pennsylvania, being duly sworn says, that on the 11th day of September, A. D. 1856, he personally served on James M. Cooper (in the foregoing citation named) a copy of the citation to which this affidavit is annexed, which service was made at the city of Pittsburgh, in the State of Pennsylvania, by delivering unto him a true copy of said original citation, and exhibiting to him at the same time said original, with the signature of said judge thereto.

GEO. WATSON, JR.

Sworn before me, and subscribed, this 11th day of September, 1856.

H. SPROUL,
United States Commissioner.

Copy—Bond.

Know all men by these presents, that we, Enoch C. Roberts, as principal, and Charles P. Woodruff, of Wayne county, Michigan, as surety, are held and firmly bound unto James M. Cooper, of Pittsburgh, in the State of Pennsylvania, in the penal sum of one thousand dollars lawful money of the United States of America, to be paid unto the said Cooper, his executors, administrators, or assigns. To which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals; dated this thirtieth day of June, in the year of our Lord one thousand eight hundred and fifty-six.

Whereas, in a certain action of ejectment in the circuit court of the United States for the seventh circuit and district of Michigan, between James M. Cooper aforesaid, as plaintiff, and Enoch C. Roberts aforesaid, as defendant; judgment has recently been rendered by said court in favor of said Cooper, and the said Enoch C. Roberts has prosecuted a writ of error to the Supreme Court of the United States to reverse the said judgment:

Now the condition of the above obligation is such, that if the above bounden Enoch C. Roberts shall prosecute his said writ of error to effect, and answer all costs and damages if he shall fail to make good his plea, the said obligation shall be void, otherwise the same shall be and remain in full force and virtue.

ENOCH C. ROBERTS, [SEAL.]
CHARLES P. WOODRUFF, [SEAL.]

Sealed and delivered in presence of—
A. J. WESTON,
A. J. LOBDELL.

I approve of the foregoing bond.

JOHN McLEAN.

Filed in open court, June 30, 1856.

JNO. WINDER, *Clerk*.

Judgment Record.

Pleas before the judges of the circuit court of the United States for the seventh circuit and district of Michigan, at the district court-room in the city of Detroit, of the term of June, in the year of our Lord one thousand eight hundred and fifty-six—in the case wherein

JAMES M. COOPER is plaintiff
and
ENOCH C. ROBERTS is defendant.

DISTRICT OF MICHIGAN, *to wit:*

Be it remembered that on the twenty-third day of June, in the year of our Lord one thousand eight hundred and fifty-three, the said plaintiff, by Samuel F. Vinton, his attorney, came into the court aforesaid, before the judges thereof, according to the statute and the rules of said court, and filed his declaration against the said defendant, which said declaration is in the words and figures following, that is to say:

Declaration.

THE UNITED STATES OF AMERICA, *ss:*

Circuit Court of the U. S. for the 7th circuit and district of Michigan, of the term of June, 1853.

John Doe complains of Richard Roe, for that, whereas heretofore, to wit, on the 23d day of April, 1853, in the State of Michigan and district aforesaid, James M. Cooper, who then was and still is a resident citizen of the commonwealth of Pennsylvania, had demised to the said John Doe the lands and tenements hereinafter specified, with the appurtenances thereunto belonging, situate in the county of Ontonagon, in said State of Michigan, known and described as follows, viz: The east half of the northeast quarter of section number sixteen (sec. 16), in township number fifty (50) north, of range number thirty-nine (39) west; and the east half of the southeast quarter of the same section, township, and range, containing, together, one hundred and

sixty acres, more or less; excepting and reserving, however, from the same two tracts of land, parcels of said premises, containing twenty-two and a half (22½) acres each, which said two tracts are described as follows, viz: One tract, beginning at the southeast corner of said section, and running thence west forty (40) rods, thence north ninety (90) rods, thence east forty (40) rods, thence south ninety (90) rods, to the place of beginning. And the said other tract, beginning at the northeast corner of said section, and running thence west forty (40) rods, thence south ninety (90) rods, thence east forty (40) rods, thence north ninety (90) rods, to the place of beginning; reserving, nevertheless, to the said James M. Cooper, the right to all mines or minerals now discovered or that may hereafter be discovered on the said last named tract of twenty-two and a half acres, and the right of working the same, provided such mining operations shall not incommode the working of the present steam-engine stamp mill and sawmill of the Minnesota Mining Company, in said last named tract, nor obstruct the stream of water on which said stamp and sawmills are situated, to the detriment of said Minnesota Mining Company.

To have and to hold the said demised premises to him the said John Doe from the said twenty-third day of April, 1853, for and during the term of ten years then next ensuing.

By virtue of which said devise the said John Doe afterwards, to wit, the same day and year, entered into the said land and tenements above mentioned, with the appurtenances, and was thereof possessed for the term aforesaid. And the said John Doe being so thereof possessed, the said Richard Roe afterwards, to wit, on the same day and year aforesaid, with force and arms, entered into the said lands and tenements, with the appurtenances, and then and there rejected the said John Doe therefrom; and other wrongs and injuries to the said John Doe then and there did, to his damage ten thousand dollars. And thereupon he sues, &c.

SAML. F. VINTON,
Att'y for Pl'ff.

To Mr. Enoch C. Roberts, of Rockland, Ontonagon county, State of Michigan.

Sir: I am informed that you are in possession of or claim title to the premises in this declaration of ejectment mentioned, or to some part thereof, and I being sued in this action as a casual ejector only, and having no claim or title to the same, do advise you to appear on the first day of the next term of the said circuit court of the United States, in said district of Michigan, to be held at the city of Detroit on the third Monday of June next, and then and there to cause yourself to be made defendant in my stead; otherwise I shall suffer judgment therein to be entered against me by default, and you will be turned out of possession.

Dated May 10, 1853.

Yours, respectfully, &c. RICHARD ROE.

I, Enoch C. Roberts, acknowledge that service of the foregoing declaration in ejectment has been this day duly made on me, and I hereby authorize Truman Smith, esq'r, or any other attorney of said circuit court U. S., to appear for me and make me the defendant in place of the said Richard Roe; and also to enter into the common consent rule for me to plead to said declaration at the next term of said court.

Rockland, Michigan, May 23d, 1853.

E. C. ROBERTS.

Consent Rule and Plea.

And the said Enoch C. Roberts, by Mr. Truman Smith, his attorney, comes and confesses the lease, entry and ouster in the said declaration alleged, and admits himself to be in possession of the premises in said declaration mentioned; and, for plea to said declaration, says that he is not guilty of the trespass and ejectment in the said declaration charged against him, and of this he puts himself upon the country, and the said John Doe doth the like.

TRUMAN SMITH,
Att'y for Enoch C. Roberts.

Agreement to waive Objections to form of Action, &c.

JOHN DOE, ex demise
JAMES M. COOPER,
vs.
ENOCH C. ROBERTS.

Ejectment in circuit court U. S. for the district of Michigan.

By mutual agreement of parties, all objections to this suit is waived which might be taken thereto, for want of proper parties, or to the form of the action, or the form of the pleadings therein.

SAM'L F. VINTON,
Att'y for Pl'ff.
TRUMAN SMITH,
Att'y for Def't.

Award of Venire.

Therefore, to try the issue above joined, let a jury come thereof, by whom, &c., and who neither, &c., because as well the said plaintiff as the said defendant have put themselves upon that jury.

Verdict.

And the jurors of that jury of whom mention is made, to wit: Amos Hamlin, Henry H. Sherman, Joseph B. Pierce, Benjamin H. Curtis, Robert H. Anderson, Lucius G. Noyes, Ezekiel Webb, John Barbour, Wales Adams, Leverett Whitcomb, John Simpson and Daniel S. Wilkinson, being summoned, also come, who being elected, tried, and

sworn well and truly to try this issue joined between the parties aforesaid, after hearing the evidence adduced and receiving the charge of the court, say: That the said Enoch C. Roberts is guilty of the trespass set forth in said plaintiff's declaration, and of withholding from the said James M. Cooper the lands and premises therein described as situate in the county of Ontonagon, and State of Michigan, and being the east half of the northeast quarter of section sixteen, in township number fifty (No. 50) north, of range number thirty-nine (No. 39) west; and the east half of the southeast quarter of the same section, township and range, containing together one hundred and sixty acres, more or less: Excepting and reserving from the same two tracts of land, parcels of said premises, containing twenty-two and a half acres each; which said two tracts, thus excepted and reserved, are described as follows, to wit: One tract beginning at the southeast corner of said section and running thence west forty (40) rods; thence north ninety (90) rods; thence east forty (40) rods; thence south ninety (90) rods to the place of beginning. And the true and proper boundaries and description of the said other excepted and reserved tract, said jurors ascertain and find to be as follows, to wit: Beginning at the northeast corner of said section and running thence west ninety (90) rods; thence south forty (40) rods; thence east ninety (90) rods; thence north forty (40) rods to the place of beginning. And that the said James M. Cooper is well entitled to hold and possess the premises withheld as aforesaid, in fee-simple, as the said James M. Cooper hath, in his declaration in this cause, complained against the said Enoch C. Roberts; and they, the said jury, assess the damages of the said James M. Cooper, by reason of the matters aforesaid, over and above his costs and charges by him about his suit in this behalf expended, at six cents.

Judgment.

Therefore, it is considered by the court here, that the plaintiff, James M. Cooper, is the owner in fee-simple, and that he do recover possession of said premises described in the verdict of the jury as aforesaid, to wit: The lands and premises described as situate in the county of Ontonagon, and State of Michigan, and being the east half of the northeast quarter of section sixteen, in township number fifty (No. 50) north, of range number thirty-nine (No. 39) west, and the east half of the southeast quarter of same section, township and range, containing together one hundred and sixty acres, more or less:

Excepting and reserving from the same two tracts of land, parcels of said premises, containing twenty-two and a half acres each; which said two tracts, thus excepted and reserved, are described as follows, to wit: One tract beginning at the southeast corner of said section and running thence west forty (40) rods; thence north ninety (90) rods; thence east forty (40) rods; thence south ninety (90) rods to the place of beginning. And the said other tract, excepted and reserved as aforesaid, beginning at the northeast corner of said section and running thence west ninety rods (90); thence south forty (40) rods; thence east ninety

(90) rods; thence north forty (40) rods to the place of beginning. And it is also considered by the court here, that the said James M. Cooper do recover of said Enoch C. Roberts the sum of six cents damages, assessed by the jury as aforesaid, in form aforesaid, together with his costs and charges by him, the said James M. Cooper, laid out and expended about his suit and to be taxed. And that the said James M. Cooper do have the writ of possession to put him into possession of the premises aforesaid, and also a writ of execution for his said damages, and his costs and charges to be taxed, &c.

Judgment signed, June 25, 1856.

JNO. WINDER, *Clerk*.

Stipulation and Testimony, and Bill of Exceptions.

CIRCUIT COURT OF THE UNITED STATES,
For the district of Michigan.

JAMES M. COOPER
vs.
ENOCH C. ROBERTS. } *In Ejectment.*

On the trial of this case the matters hereinafter specified are to be taken and admitted as prima facie true, in addition to, and on the same terms and conditions with an agreed statement of facts between the parties to this case, signed by S. F. Vinton for plaintiff, and Truman Smith for deft., dated April 29th, 1854, and now on file, viz:

That on the fourth of November, 1854, Alfred Williams and wife, for the consideration of $8,000, sold and conveyed to the Minnesota Mining Company out of said section, No. 16, two tracts of 22½ acres each, a copy of which conveyance is hereto annexed, marked A, which conveyance was duly executed and delivered.

That all that part of the evidence given on the former trial of this case, and which was incorporated into the bill of exceptions, (and is contained in the printed record of said case in the Supreme Court of the U. States,) which begins with the 6th line from the top of the 6th page, and ends with the word "patent," at the end of the 13th line from the top of the 7th page, is to be taken as true, subject to exceptions by either party for irrelevancy, a copy of which, marked "B," is hereto annexed.

That, subject to exceptions for irrelevancy, a copy of John Wilson's deposition, hereto annexed, marked C, may be read in evidence in lieu of the original deposition, except that part of it which states that a copy of the printed instructions of the commissioner of the general land office of the 16th and 25th of April, 1848, was sent to the governor of Michigan; and no objection is to be taken to the form of said deposition, or the mode in which it was taken or returned to this court.

It is agreed, that the premises in dispute exceed the value of two thousand dollars.

It is agreed, that if the question of the consideration paid by the plaintiff, Cooper, to his vendor, Alfred Williams, for the land in con-

troversy can be inquired into by the defendant in this action, then he may give in evidence on that subject the answer of said Cooper to the bill in equity, exhibited against him by the Minnesota Mining Company and said Enoch C. Roberts, and now pending on the equity side of the same court where this suit at law is pending.

This agreement shall not preclude either party from giving in evidence on the trial any other facts which such party might have given if this stipulation had not been entered into.

And, subject to objections for want of materiality, it is admitted that said Alfred Williams conveyed the land in controversy to plaintiff, Cooper, on the request and for the benefit of one John Bacon, who was in equity the owner thereof.

June 24th, 1856.

(Signed) S. F. VINTON,
For Pl'ff.

(Signed) T. ROMEYN,
For Def't.

(Paper No. 17)—Exhibit A.

ALFRED WILLIAMS and wife
to
MINNESOTA MINING COMPANY.

This indenture, made the fourth day of November, in the year eighteen hundred fifty-one, between Alfred Williams and Frances L. Williams, his wife, of Pontiac, Oakland county, Michigan, of the first part, and the Minnesota Mining Company of the second part, witnesseth: that the said party of the first part, for and in consideration of the sum of eight thousand dollars to them in hand paid by the said Minesota Mining Company, the receipt whereof is hereby acknowledged, do hereby remise, release, and forever quit-claim unto the said Minnesota Mining Company, their successors, assigns, and heirs of such assigns forever, all such right, title, interest, claim, or demand, as the party of the first part have or may acquire from the State of Michigan before the delivery of this deed, or from any other quarter, in and to those two certain tracts, or parcels of land, situated on, and being parts and parcels of section sixteen (16), in township number (50) north, of range number thirty-nine (39) west, within the land district of the Sault S'te Marie, in said State of Michigan, and bounded and described respectively as follows, viz:

The first tract, beginning at the southeast of said section 16, and running thence west forty rods, thence north ninety rods, thence east forty rods, and thence south ninety rods to the place of beginning, containing twenty-two and one-half acres of land now occupied by the Peninsular Mining Company.

And the second tract, beginning at the northeast corner of said section 16, running thence west forty rods, thence south ninety rods, thence east forty rods, and thence north ninety rods to the place of beginning,

containing also twenty-two and one-half acres of land, reserving, however, on the said last described tract the right to all mines or minerals now discovered, or that may hereafter be discovered thereon, and the right of working the same; provided, that such mining operations shall not incommode the working of the present steam engine, stamp mill, and sawmill of the Minnesota Mining Company on said tract, nor obstruct the stream of water on which said stamp and sawmill are situated, to the detriment of said Minnesota Mining Company. To have and to hold the said premises, with all the appurtenances thereof, unto the said Minnesota Mining Company, their successors and assigns, and the heirs of such assigns forever, so that neither the said Alfred Williams, nor his said wife, nor their heirs, nor any person under them, or either of them, shall hereafter have any claim, right, or title in, or to the premises, or any part thereof, but therefrom shall be forever excluded.

And Mr. John Bacon is hereby authorized to deliver this deed to the Minnesota Mining Company, after he shall have acquired, in the name of the said Alfred Williams, all the right, title, and interest, if any, which the State of Michigan has in said premises, to the end that this indenture may operate upon and transfer the same to said company.

And the said Williams hereby covenants, that at any time when requested thereto after he shall have acquired such title, he will execute and cause to be executed to said Minnesota Mining Company any further conveyance or assurance which may be deemed necessary for conveying and assuring to said company the title derived from such conveyance of the State to him of the above described premises.

In witness whereof, the said parties of the first part have hereunto set their hands and seals, this fourth day of November, A. D. 1851.

(Signed) ALFRED WILLIAMS, [L. S.]
(Signed) FRANCES L. WILLIAMS. [L. S.]

Signed, sealed, and delivered, in presence of—

WILLIAM PHELPS,
LODOWICK W. PHELPS.

STATE OF MICHIGAN,
County of Oakland, ss:

On this fourth day of November, one thousand eight hundred and fifty-one, before me, a notary public in and for said county, personally came the above named Alfred Williams, and Frances L. Williams, his wife, and acknowledged the above instrument, by them executed, to be their free act and deed. And the said Frances L., wife of said Alfred Williams, being by me examined separate and apart from her said husband, acknowledged that she executed the said instrument without any fear or compulsion from any one.

WILLIAM W. PHELPS,
Notary Public, Wayne county, Michigan.

[REC. CLXXXVII, D. T., 1856.]—2

(*Paper No.* 18.)

Exhibit B, annexed to supplemental agreed statement of facts, from pages 6 and 7 of printed record.

It was further given in evidence to the jury that the corners of the township No. 50 north, range 39 west, in Lake Superior land district, were established, and said township was surveyed by the Government of the United States, and ran out into sections in the summer of 1847; which survey was duly returned approved and established in the fall of that year, and that the corners of all the townships in the upper peninsula were established at the same period.

The defendant gave in evidence the report of Charles S. Jackson, the United States geological surveyor of the mineral lands of the United States in Michigan, to the Secretary of the Interior, of the date of November 10th, 1849, printed as one of the accompanying documents of the President's annual message to Congress in December, A. D. 1849, under the order of the House of Representatives, session of 1849–'50; which report, at page 626, contains a list of the mineral lands between Portage lake and the Montreal river, in which list the east half of said section 16 in said township No. 50 is set down as mineral land; which report the law required to be transmitted to the executive of the State, and which books of reports are kept in the State library at Lansing.

The defendant also proved, that from some time in the latter part of the year A. D. 1847, down to and including the time when said section No. 16 in said township No. 50 was sold by the State of Michigan to Alfred Williams, the said Minnesota Mining Company was in possession of the land now in controversy under said lease No. 78, to which the same had been assigned, and had, prior to said sale by said State of Michigan, sunk one or more shafts for copper on said land on a vein known to be valuable, in the neighborhood, and had made valuable improvements on part of their leasehold premises, and that there was reason to believe it was valuable copper land.

The plaintiff introduced Porter Kibber as a witness, who testified that, at and before the time of the publication of the advertisement marked No. 1 in said agreed statement, and at the time the lands therein specified were offered for sale under that advertisement, he was the commissioner of the State land office of the State of Michigan.

That said report of said Jackson was not in his office; that he had never seen it; did not know its contents, or that it existed; and did not know or suspect that said section No. 16 contained mines or minerals, or that it had been reported to the Government of the United States as mineral lands.

On cross-examination by defendant, he testified that he inquired of the person who applied to him to advertise for sale the lands specified in said advertisement, whether said lands were mineral lands, and was told by said person in reply, and believed the same to be true, that said lands were not mineral lands, and were only valuable for the timber they contained, and that at the time of said advertisement and sale

of section No. 16 in town. 50, he had no knowledge that it contained mines or minerals.

The plaintiff did not offer further evidence to prove that said Kibber made other inquiries than above, to ascertain whether said land contained mines or minerals.

It was further given in evidence, that the Minnesota Mining Company continued in the occupancy of the land in question under their lease down to the date of the issuing of said patent, and that they complied with all the conditions and requirements of the lease to the time of the emanation of said patent.

(*Paper No.* 19.)—(*Exhibit C.*)

I, John Wilson, of Chicago, in the State of Illinois, aged nearly forty-eight years, do depose and say, that my name, age, and place of residence, are as above specified. And I further say that I was first employed in the General Land Office, at the city of Washington, about the year 1831; that I resigned my position in that office in June, 1837; that I was again appointed in that office in 1843; to the best of my recollection, this latter appointment having been that of principal clerk of surveys in said office; that I remained in that position till 1850, when I was appointed principal clerk of public lands, and held that office till the fall of 1852, when I was appointed by President Fillmore Commissioner of said General Land Office, which office I filled till the 27th day of June, 1855, when my commission was revoked by President Pierce. While filling the position of principal clerk of surveys I prepared a report for the commissioner, reviewing the whole practice relative to the mineral lands, on which I understood the Attorney General founded his opinion; that the leases and permits for working copper mines previously issued by the War Department were without authority of law, and consequently void. These leases were all in one form, and embraced the same conditions.

There was but one form prepared for the Department or used by it. On this decision the acts of 1st and 3d March, 1847, (Laws United States, Little & Brown's ed., vol. 9, pp. 146 and 179,) were passed. By some oversight, the land officers for the district authorized by these acts were not appointed till 1848; the session of 1847 having been closed before the nominations were sent in, and the president had not the power to make these appointments during the recess, as it was held they were not vacancies. Prior to the appointment of these officers, some of the most important leases expired, and most of them that were entitled under the law expired before the surveys were made, and the plats returned so that they could enter. At all events all of them had expired before the close of the year 1849, and they were extended in this manner. When the first leases were about to expire, or had expired, the subject was brought to the notice of the head of the office. It was held, after conference with the Attorney General, that all the lessees should be regarded as holding over under their leases, as by the terms of their leases a forfeiture could only be worked in the manner

therein specified. On this decision and construction all the action was had in relation to the leases, and the rights of the parties under them, and consequently they were only required to enter the lands embraced by their leases, prior to the time appointed by the President's proclamation for the commencement of the sale of the lands included in such leases.

Where such leases included the whole, or any part of the sixteenth section, the lessee's right was considered paramount, or superior, to that of the State, for the following reasons, to wit:

By the act of 15th June, 1836, admitting the State of Michigan into the Union, it is expressly provided: "That nothing in this act contained, or in the admission of said State into the Union as one of the United States of America, upon an equal footing with the other States in all respects whatever, shall be so construed or understood as to confer upon the people, legislature, or other authorities of the said State of Michigan, any authority or right to interfere with the sale by the United States, and under their authority, of the vacant and unsold lands within the limits of said State, but that the subject of the public lands, and the interests which may be given to the said State therein, shall be regulated by future action between Congress on the part of the United States, and the said State, or the authorities thereof."

By the act of 23d June, 1836, (vol. 5, p. 58,) section 16 in every township, and where such section had been sold or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, were granted to the State of Michigan.

At that time, when the act of 1847 was passed, the surveys had not been extended to the region of country where the lands are situated that are now in controversy. Hence the right of the State under this act had not attached to any particular body of land; the surveys of the leases, on the contrary, had been made, and the rights granted by the acts of 1847 attached to the particular land so surveyed. It was perfectly competent for the Executive to have ordered a new and distinct base line and meridian to be laid down for the upper peninsula of Michigan, and this would have wholly changed the location of the 16th section. It was also perfectly competent for Congress to have directed a different mode of surveying these lands, as was done for Louisiana and Mississippi by the act of the 3d March, 1811, and 24th May, 1824, so that the tracts, which otherwise would have been included within the 16th section, would leave wholly different designations. To provide for all such cases, the act of 20th May, 1826, was passed, appropriating lands for the support of schools in townships and fractional townships not provided for. Other and special provision was made for such cases in several of the States, and especially with reference to the lands in Wisconsin, and to the Chickasaw reservations in Mississippi and Alabama, and the Creek cessions in the latter State. In all these cases and many others the base lines and meridians were established in the States, and the grant of the 16th section had been made to the States before the lands, including many sections sixteen,

had been reserved or granted to the Indians. To hold that the State has a vested right in section 16 wherever it may fall, and that the United States have no right to dispose of it, would be to unsettle many of the most valuable titles in the public land States.

When the business connected with the mineral lands was transferred from the War Department by the act of 1847, it was placed under my charge as principal clerk of surveys in the General Land Office.

The forms attached, A and B, were those of the permits and leases transferred with the other documents by the War Department; those marked "C" and "D" were prepared by me after full conference with the Commissioner and the Secretary of the Treasury. I was of course perfectly familiar with all questions that arose in relation to these lands and the decisions on them. One of the earliest and most important, as already stated, was in relation to the leases that had expired and would expire before the offices were opened or the surveys made. The decision and rule of action was, as stated, that the lessees should be regarded as holding over under the lease, no forfeiture having accrued. This rule was freely communicated and became the basis of action in all cases; copies of them, and with a notice that they constituted the rule of the Government, and would regulate its practice, were sent to all the land offices in Michigan and Wisconsin, and every lessee in the mineral district waited for more that three years from the date of the lease before he applied for or obtained his patent.

(Signed) JOHN WILSON.

Sworn to on the 17 of June, 1856.

Exhibit A, referred to in John Wilson's deposition.

Be it known, that there is hereby granted to
full permission for the term of one year from the date of these presents, to examine and dig for lead and other ores on any part of the lands known as the mineral district, in the region of country lying south of Lake Superior, which was acquired by the United States from the Chippewa Indians, by the treaty with them of 4th October, 1842, and ratified on the 10th day of February, 1843: Provided that such examination and diggings shall not be made on any tract which may have been selected by any other person, or company of persons, acting under the authority of the Secretary of War or of the United States agent for said mineral lands; and that this permit is not to be construed as authorizing any selection of lands on Isle Royale or south of the head-waters of the streams which empty into said lake.

And if the said shall, at any time within the year above mentioned, select a portion or tract of land in said district which he desires to occupy for mining purposes, which portion must be of a square form of four equal sides, of not exceeding one mile each, bounded by due east and west, and north and south lines, in all cases where the boundary is not determined by said lake or some other sheet of water, or by some other location previously made; and

shall, at the time of making such selection, mark the corners thereof, and leave a person in charge, so as to point out the selection to other persons seeking to make selections, and shall transmit to the Secretary of War, within said year, a description of the tract so selected, accompanied by a plat of survey of the same, exhibiting the courses and lengths of the exterior lines, together with the name and general course of any river, stream, or other water running through, lying within or bounding the same, together with the bearing and distance of the point of beginning of such survey, from some well-known or easily identified natural permanent object; and shall moreover keep a true and faithful account of all the ores of every description which he shall dig, or allow to be dug, on any portion of said tract, from the time of selecting the same to the time of execution of a lease as hereinafter mentioned; and which description shall moreover be accompanied by a certificate of the United States agent aforesaid, that such selection does not interfere with any other location made under proper authority; then in such case a lease will be granted under the seal of the War Department to the said for the tract so described, for the term of three years, upon his tendering a satisfactory bond in a sum not less than three thousand dollars, conditioned for the faithful performance of the conditions of such lease.

And the lease so to be granted will stipulate that the United States as party of the first part, may at any time during the continuance of the lease select and occupy such part of said tract for military purposes as may be deemed necessary, not exceeding in area one-half of a square mile; and such part also as may be deemed necessary for a mineral agency, not exceeding in area one-eighth of a square mile, and in both cases free of any charge for such occupancy; provided such area or areas shall not include any mine or lode of mineral which is being worked at the time when so selected for occupation. And that the party of the second part shall have full right during the continuance of the lease to dig and take from any part of the lands so leased which are not occupied for military purposes, or as a mineral agency, all lead, copper, or other ores which they may find thereon, and may erect on said lands, at their own proper cost, such buildings, furnaces, mills, and other works, as may be necessary for the accommodation of themselves, their agents, and workmen, and for the mining of the ores and extracting metal therefrom; and for these purposes alone may use all such timber, stone, firewood, and other fuel, as may be necessary, found on those parts of said tract which may not have been selected as aforesaid for military purposes, or for a mineral agency. And that said party of the second part will commit no waste, nor suffer it to be committed, and that at the termination of the lease, the said tenant or tenants shall have no claim upon the Government of the U. States for payment or remuneration for buildings or improvements erected upon the said demised premises, or expenses incurred in their erection.

And in the lease so to be granted the said party of the second part, for himself, his heirs, representatives, and assigns, will covenant, pro-

mise, and agree, that the mines, lodes, and deposits of ore discovered, or which may be discovered on the land so leased, shall be worked with due diligence and skill; it being fully understood that the motive for granting the lease is, that these lands shall be worked for mining purposes, and are not to be held as farming lands; and that all the ores and minerals dug on any part of the land so leased, either by them or others under their permission, shall be smelted within the said district of country acquired by the treaty aforesaid, and that no part of the same shall be transported in their crude state beyond the boundary of that district, without special permission in each instance from the party of the first part; that they will keep, or cause to be kept in a book or books to be provided by them for that purpose, a true and full account of all of each kind of ore or mineral which may be dug by them, their servants, and assistants, and by each person or company of persons whom they may allow to mine or dig on the tract of land so leased, together with a true and full account of all metals extracted from said ores or minerals; and that they will moreover make monthly returns to the War Department or to such officer or agent as may be named by the party of the first part, and in such form as may be prescribed by that party; which returns shall show the quantity of all ores or mineral dug on the land so leased, not only by themselves and their immediate servants and assistants, but by each person or company of persons distinctly, whom they may allow to mine or dig thereon, together with the full quantity of metal extracted in each case from all ores or minerals so dug, and which books and return shall be verified by oath in due form of law, if required by the party of the first part. And further, that any superintendent or other agent, acting under the authority of the party of the first part, may reside at or visit at all times any or all of the mines, mills, or furnaces, on the tract of land so leased, and that every facility shall be afforded to him of examining every operation of mining and smelting carried on upon said land; and that the book or books hereinbefore mentioned shall be at all times open to his inspection.

And the said party of the second part, for himself, his heirs, representatives, and assigns, will further covenant, promise, and agree to pay or cause to be paid, semi-annually, (or oftener, if required,) as rent to the United States for the use of the lands so leased, and deliver the same free of cost at Fort Brady, on the Sault Ste. Marie, at Copper Harbor or Point Kemuna, at the Ontonagon river, at the La Pointe agency, or other place on the southern shore of Lake Superior, as may be from time to time determined upon by the party of the first part, and to such person as may be appointed to receive it, six pounds out of every one hundred pounds of the metal which may be extracted from all the ores or mineral dug on the land so leased; and that in all these cases this rent shall be paid in metal in the state of refinement to which it may be brought by or for them by the last refining process, to which it may subjected in said mineral district, and shall be selected of a fair average quality from the better kinds intended by the said les-

sees for use or sale in market. And further, that they will keep a true account, and make returns in manner hereinbefore mentioned, of all the ores or mineral which they may receive for the purpose of smelting, or may purchase from any other person or company mining in said district, beyond the bounds so leased to them, with a true account of the metal extracted from it, and the name of the person or company from whom they may receive it, and the locality of the mines from which it was dug, and will deduct and pay over to the agent of the United States, in manner aforesaid, six pounds out of every one hundred pounds of all the metal so extracted. And in the event that they shall not elect to smelt the ores or mineral that may be dug from the land mentioned in the lease, that then in such case they shall deliver or cause it to be delivered to a smelter duly licensed by the United States, or to some one holding a lease of this description, and to none other, and shall allow him or them to deduct therefrom sufficient to enable him or them to pay over the rents at the places and in the manner hereinbefore provided.

And the lease so to be granted will further stipulate, that within three months after the expiration of the three years for which the lease is granted, the said party of the second part, his heirs, representatives, and assigns, will remove from said tract and surrender peaceable possession of the same, unless they shall within said three months obtain a renewal of said lease as hereinafter provided; and further, that upon the failure of the said party of the second part, his heirs, representatives, or assigns, to conform to and carry into effect any of the promises and agreements above stipulated to be performed by the said party of the second part, that the lease shall be void and forfeited, and that said party of the first part may re-enter, take possession of, and lease the above mentioned tract, or any part thereof, to others; and that upon written notice being served by any authorized agent of the party of the first part, setting forth that said lease is deemed to have been forfeited for cause mentioned in said notice, such notice being given to any partner or agent of said party of the second part, his heirs, representatives, or assigns, or left on said tract in default of any such person being present, the said party of the second part will, within three months, remove from said tract, and surrender peaceable possession of the same, unless they shall, in the mean time, have remedied the defect complained of, or made such explanations as shall have induced the Secretary of War or other officer acting under the authority of said party of the first part, to remit the forfeiture and to grant them written permission to remain.

At the end of said three years, if Congress shall not in the meantime have passed a law directing the sale or other disposition of these lands, and the party of the second part shall have fully complied with the conditions set forth in such lease, and shall tender a satisfactory bond in a sum not less than *three* thousand dollars, conditioned for the faithful performance of a new lease, then said party of the second part, or their assigns, shall be entitled to a renewal of such lease for the

further term of three years upon the same terms and conditions, except that, for such second term of three years, the rent stipulated to be paid shall be ten per cent. of the metal extracted. And, at the end of this second term of three years, if Congress shall not then have passed a law directing the sale or other disposition of these lands, and the party of the second part, or their assigns, shall have complied with all the stipulations of such second lease, they shall be entitled to a renewal of it for the further term of three years, upon furnishing, in same manner, a like new bond for the performance of that lease.

Given at Washington this day of in the year of our Lord one thousand eight hundred and forty-

Secretary of War.

By virtue of the authority given to me by the foregoing permit, I have selected a tract for the purpose of mining thereon, of which tract the following is a true description:

Beginning at

and pray that a lease may be granted for the same.

Dated at this 184

I have carefully examined the description of the tract above applied for, and find that it does not interfere with any other location made under proper authority, and I recommend that a lease be granted as prayed for.

Dated at this 184

Exhibit B, referred to in John Wilson's Deposition.

Entered at the Ordinance Office as Lease No.

This indenture, made in duplicate, and entered into this day of in the year of our Lord one thousand eight hundred and forty- between the United States of America, acting herein by Secretary of War, of the first part, and of in the State of of the second part, witnesseth:

That the said party of the first part, for and in consideration of the rents, covenants, and agreements, hereinafter mentioned, doth by these presents, and by and with the approbation of the President of the United States, grant, lease, and farm unto the said party of the second part, his heirs, representatives, and assigns, (they being citizens of the United States,) for the full term of three years from the date hereof, a certain tract of land for the purpose of mining for lead and other ores which may be found thereon; which tract of land hereby leased is situate within the region of country on the southern shore of Lake Superior, and is described as follows:

To have and to hold the same for the term aforesaid unto the said party of the second part, his heirs, representatives, and assigns, upon the following conditions, viz: That the said party of the first part may, at any time during the continuance of this lease, select and occupy such part of said tract for military purposes as may be deemed necessary, not exceeding in area one-half of a square mile, and such part also as may be deemed necessary for a mineral agency not exceeding in area one-eighth of a square mile, and in both cases free of any charge for such occupancy, provided such area or areas shall not include any mine or lode of mineral which is being worked at the time when so selected for occupation. And the said party of the second part shall have full right, during the continuance of this lease, to dig and take from any part of the lands hereby leased which are not occupied for military purposes or as a mineral agency, all lead, copper, or other ores which they may find thereon, and may erect on said lands, at their own proper cost, such buildings, furnaces, mills, and other works as may be necessary for the accommodation of themselves, their agents and workmen, and for the raising of the ores and extracting metals therefrom; and for these purposes alone may use all such timber, stone, firewood, and other fuel as may be necessary, found on those parts of said tract which may not have been selected as aforesaid for military purposes or for a mineral agency. And the said party of the second part covenants that he will commit no waste, nor suffer it to be committed; and that at the termination of this lease, the said tenant or tenants shall have no claim upon the Government of the United States for payment or remuneration for buildings or improvements erected upon the said demised premises, or expenses incurred in their erection.

And the said party of the second part, for himself, his heirs, representatives and assigns, hereby covenants, promises and agrees, that the mines, lodes, and deposits of ore, discovered, or which may be discovered on the land hereby leased, shall be worked with due diligence and skill, it being fully understood that the motive for granting this lease is, that these lands shall be worked for mining purposes, and are not to be held as farming lands; and that all the ores or mineral dug on any part of the land so leased, either by himself or others, under his permission, shall be smelted within the district of country aforesaid, and that no part of the same shall be transported in their crude state beyond the boundaries of that district without special permission from the party of the first part; and that they will keep, or cause to be kept, in a book or books to be provided by them for that purpose, a true and full account of all of each kind of ore or mineral which may be dug by them, their servants, and assistants, and by each person or company of persons, whom they may allow to mine or dig on the tract of land so leased, together with a true and full account of all the metals extracted from said ores or mineral; and that they will, moreover, make monthly returns to the War Department, or to such officer or agent as may be named by the party of the first part, and in such form as may be prescribed by that party; which returns shall show the

quantity of all ores or mineral dug on the land so leased, not only by themselves and their immediate servants and assistants, but by each person or company of persons distinctly, whom they may allow to mine or dig thereon, together with the full quantity of metal extracted in each case from all ores or mineral so dug, and which books and returns shall be verified by oath in due form of law, if required by the party of the first part; and further, that any superintendent or other agent, acting under the authority of the party of the first part, may reside at, or visit at all times, any or all of the mines, mills, or furnaces on the tract of land so leased, and that every facility shall be offered to him of examining every operation of mining and smelting carried on upon said land; and that the book or books, hereinbefore mentioned, shall be at all times open to his inspection.

And the said party of the second part, for himself, his heirs, representatives and assigns, hereby further covenants, promises and agrees to pay, or cause to be paid semi-annually, (or oftener, if required,) as rent to the United States, for the use of the land so leased, and deliver the same free of cost at Fort Brady, on the Sault Ste. Marie, at Copper Harbor, on Point Humuna, or the Ontonagon river, at the La Pointe agency, or at such other place on the southern shore of Lake Superior as may be from time to time determined upon by the party of the first part, and to such person as may be appointed to receive it, six pounds out of every one hundred pounds of the metal which may be extracted from all the ores or mineral dug on the land so leased; and that in all these cases this rent shall be paid in metal in the state of refinement to which it may be brought by or for them by the last refining process to which it may be subjected in said district, and shall be selected of a fair average quality from the *from the* better kind intended by the said lessees for use or for sale in market; and further, that they will keep a true account and make returns in manner hereinbefore mentioned of all the ores or mineral which they may receive for the purpose of smelting, or may purchase from any other person or company, mining in said district, beyond the bounds so leased to them, with a true account of the metal so extracted from it, and the name of the person or company from whom they may receive it, and the locality of the mine from which it was dug, and will deduct and pay over to the agent of the United States, in manner aforesaid, six pounds out of every one hundred pounds of all the metal so extracted. And in the event that they shall not elect to smelt the ores or mineral that may be dug from the land mentioned in this lease, that then, in such case, they shall deliver, or cause to be delivered, to a smelter, duly licensed by the United States, or to some one holding a lease of this description, and to none other, and shall allow him or them to deduct therefrom sufficient to enable him or them to pay over the rents at the places and in the manner hereinbefore provided.

And it is fully understood and agreed between the parties to this lease, that within three months after the expiration of the three years for which this lease is granted, the said party of the second part, his

heirs, representatives, and assigns, will remove from said tract and surrender peaceable possession of the same, unless they shall within said three months obtain a renewal of this lease as hereinafter provided; and further, that upon the failure of the said party of the second part, his heirs, representatives or assigns, to conform to and carry into effect any of the promises and agreements above stipulated to be performed by said party of the second part, that this lease shall be void and forfeited, and that said party of the first part may re-enter, take possession of and lease the above mentioned tract or any part thereof to others. And it is further understood, that upon written notice being served by any authorized agent of the party of the first part, setting forth that this lease is decided to have been forfeited for cause mentioned in said notice, such notice being given to any partner or agent of said party of the second part, his heirs, representatives or assigns, or left on said tract in default of any such person being present, the said party of the second part hereby covenants, promises and agrees, for himself, his heirs, representatives and assigns, that they will within three months remove from said tract and surrender peaceable possession of the same, unless they shall in the mean time have remedied the defect complained of, or made such explanations as shall have induced the Secretary of War, or other officer acting under the authority of said party of the first part, to remit the forfeiture and grant them written permission to remain.

And the said party of the first part hereby stipulates and agrees, that at the end of said three years, if Congress shall not in the mean time have passed a law directing the sale or other disposition of these lands, and the party of the second part or their assigns shall have fully complied with the conditions on their part set forth in this lease, and shall tender a satisfactory bond in a sum not less than thousand dollars, conditioned for the faithful performance of a new lease, then said party of the second part, or their assigns, shall be entitled to a renewal of this lease for the further term of three years, upon the same terms and conditions, except that for such second term of three years the rent stipulated to be paid shall be ten per cent. of the metal extracted; and at the end of this second term of three years, if Congress shall not then have passed a law directing the sale or other disposition of these lands, and the party of the second part or their assigns shall have complied with all the stipulations of such second lease, they shall be entitled to a renewal of it for the further term of three years, upon furnishing in same manner a like new bond for the performance of that lease.

In witness whereof, the said Secretary of War, acting for the party of the first part as aforesaid, hath hereunto set his hand and caused the seal of the War Department to be affixed, and the parties of the second part have set their hands and seals, the day and year first above written.

Signed and sealed in presence of—

Exhibit C, referred to in John Wilson's Deposition.

Instructions to Land Officers at Sault S'te Marie, Michigan.

GENERAL LAND OFFICE, *April* 16, 1848.

GENTLEMEN: I have to call your special attention to the act of 1st March, 1847, establishing the land district, the charge of which has been placed under your care.

The second section of the act requires that the land in your district shall be separated into two classes, to wit: Such as may contain copper, lead, or other valuable ores, the minimum price of which is fixed at five dollars per acre, except to lessees, permittees, and occupants, in whose favor, under certain restrictions, the minimum is reduced to half that sum per acre; and the agricultural lands, or those reported as not containing copper, lead, or other valuable ores, which are directed to be sold in the same manner as other lands, under the laws now in force for the sale of the public lands, excepting and reserving from such sales section sixteen in each township for the use of schools, and such reservations as the President shall deem necessary for public uses; the minimum price of these lands, of course, is $1 25 per acre. For your guidance and direction in the sales of the latter, full directions have been sent you; in the sales of the former you will be governed by the following directions:

All the lands reported to you by Dr. C. T. Jackson, the gentleman appointed by the Secretary of the Treasury to make a geological examination and survey of your district, as containing copper, lead, or other valuable ores, you will mark upon your township plats, and in the margin of your tract-books the letter M., to designate them as mineral lands. Where section sixteen is so reported, and where it is included in the limits of a lease or permit, it will not be reserved for school purposes; in all other cases it will be so reserved.

The Secretary of the Treasury has prescribed the following rules for your government, as to the proof which shall be made to you of the possession and occupancy of the mine or mines claimed by individuals under the third section of this act, and the evidence which shall be received of the payment of all rents due the U. S., before such persons shall be permitted to enter the land claimed by them, to wit:

1st. Where persons claim, under a lease from the Secretary of War, they must produce and file with you the duplicate of their lease.

2d. They shall prove to your satisfaction, by the affidavits of two or more disinterested credible witnesses, sustained by their own deposition, that they are in possession of the land described by that lease, by actual occupancy, for the purpose of mining thereon.

3d. They shall prove in like manner that they have complied with all the conditions and stipulations of said lease, except as to the payment of the rent due the Government. On this point, the certificate of the mineral agent, that the claimant has paid the whole of the amount due by him to the Government, or that no mineral of any

value has been raised from the lands, and hence there is no rent due, will be sufficient evidence.

4th. Persons claiming under a written permit from the Secretary of War, shall produce their permits and file them with you.

5. They shall prove, in the manner directed in the second rule above, that they have visible landmarks and monuments on the lands claimed by them.

6. They shall prove in like manner that they have complied with the conditions and stipulations contained in those permits.

7. All persons who shall prove in like manner that they are in possession, by actual occupancy, of a mine or mines actually discovered before the passage of this act, and who shall produce a certificate of the mineral agent that they have paid the same per centum of rents as those who held under leases, or that no mineral has been raised, and therefore that no rent has accrued, shall be permitted to enter and purchase one section of land, and not less, to include such mine or mines discovered and occupied as aforesaid.

8. Should any of the claimants be dissatisfied with your decision on their claims, they must state that fact to you in writing within ten days after the decision is made, and take an appeal to the Secretary of the Treasury, stating succinctly and distinctly the grounds and reasons for their objections. This appeal you will forward to this office, with all the evidence in the case, accompanied by a report from you of all the facts and the reasons for your decision.

9. The testimony prescribed in the foregoing rules may be taken before yourself, a justice of the peace, or notary public; but if before either of the two last mentioned officers, the age, character, and credibility of the witnesses must be certified by him. The fact that the justice of the peace was duly commissioned and qualified at the time of taking the depositions, must be certified by the clerk of the proper court under seal, and the acts of the notary must be attested by his seal.

The price of land to each individual of these classes of claimants will be two dollars and fifty cents per acre.

The term "occupancy" in this act and in the second of the foregoing rules has an important bearing in the cases which may be presented for adjudication, and as it is found in similar connection with the same term used in the pre-emption acts of 1830 and 1834, the true import of which has caused considerable discussion, I refer you, for a full explanation of the term, to the opinions of the Attorney General of the 21st June, 1836, Part 2 of Laws, Instructions, and Opinions, page 97; and of 29th March, 1837, same volume, page 108. As the action of this office in relation to this matter since those opinions were given has been based on them, you will also be governed by them.

That you may understand the conditions and stipulations of these leases and permits, proof of a compliance with which is required by the third and sixth of the foregoing rules, blank forms of those leases and permits are herewith enclosed. Cases may arise where the claimants were prevented, prior to the passage of this act, from complying

with all the conditions and stipulations of these leases and permits, by the opinion of the Attorney General that they were not authorized by law, and the consequent refusal of the War Department to carry out the system previously established. In all such cases, where you are satisfied that the parties were thus prevented from fully complying with the conditions and stipulations of their leases and permits, you will permit their entries under the decision in the case of Robert Spiers, Part 2, Laws, Instructions, and Opinions, page 639.

Lessees or permittees will not be permitted to relinquish or waive their rights under their leases or permits, and enter as mere settlers. These leases or permits will be regarded as reserving the land from sale or entry of every kind, except by the parties holding them, until they have expired by the lapse of time or voluntary surrender; and if they expire before the day of sale, then till that day, when they will be offered as unclaimed lands.

These lessees or permittees may enter the lands to which they establish a claim, under the rules herein prescribed, at any time during the continuance of such lease or permit; and where they expire before the public sale of the land including their claim, then till the day before the period fixed by the President's proclamation for the commencement of such sale, to the extent of such lease or permit, where the original survey of it and the lines of the public surveys are coincident; where they are not, it has been decided by this office, with the concurrence of the Secretary, as a general principle, that "when the lands of a lease or permit include the greater part of a legal subdivision, the owner of such lease or permit will be required to take the whole of that subdivision; and when the greater part of a subdivision is outside the limits of a lease or permit, that the whole of such subdivision be excluded from that lease or permit, except where the owner of such lease or permit shall thereby be deprived of valuable improvements, when he shall be authorized to take the whole of such subdivision. Should cases arise where the owners of contiguous leases would be injuriously affected by this last principle, and one or the other will be compelled by it to lose a portion of his improvements, preference will be given to the first occupant.

Those settlers whose cases are embraced by the seventh of the foregoing rules, can enter the tract to which they establish a right under that rule at any time before the day appointed by the President's proclamation for the commencement of the sale of the lands including such tract. Their entry may either be of a technical section, or two contiguous half sections, or four contiguous quarter sections, forming the compact body of the shape and area of a section; and if two or more persons are in possession of the same section, the first occupant shall be entitled to a preference, unless the same can be divided by legal subdivision so as to give to each the discovery claimed by him. In this case quarter-quarter sections will be considered legal subdivisions.

You will write at the top of the certificates issued for any of the beforementioned claims the words "lease," "permit," or "pre-emption,"

as the case may be—"act of March 1st, 1847;" and for your services in any one and all of such cases you will each be entitled to a fee of one dollar, to be paid by the claimant on the issuing of the certificates.

The proof in each of these cases will be forwarded to this office with a proper certificate.

In offering these mineral lands at public sale, you will be careful to withhold all legal divisions and subdivisions upon which there may *may* be an outstanding lease or leases from the Secretary of War unexpired and undetermined, and which are actually occupied for mining purposes, and the occupants of which have complied with all the requisitions of such lease or leases, and continue to perform the same, and where the owners of the leases or permits do not relinquish them. After the public sale, you will report a list of all the lands thus withheld, showing the reason for that action.

These lands will be offered in quarter or fractional-quarter sections, in the same manner and order as the agricultural lands are offered. And all fractional-quarter sections will also be offered separately, whatever may be their area. For all these lands the minimum price will be five dollars per acre. On the top of all the certificates issued for any of the lands, you will write the word "Mineral Act of 1st March, 1837," and also "Public Sale" when they are so sold; when they are sold at private entry, the words "Public Sale" will be omitted.

Should you have good and sufficient reasons to believe, or are credibly informed, that combinations have been formed to prevent fair competition at the public sales, you will notify the offending parties of the provisions of the 4th and 5th sections of the act of 31st March, 1830, Part 1, Laws, Instructions, and Opinions, page 46, and if the offence is continued or renewed, you will immediately stop the sale and ascertain as far as practicable the names of the offenders and their places of residence, that they may be prosecuted under that law.

Very respectfully, your obedient servant,

RICHARD M. YOUNG,
Commissioner.

Register and Receiver, Sault Ste. Marie, Michigan.

Exhibit D, referred to in John Wilson's Deposition.

Instructions to the Land Officers at Sault Ste. Marie, Michigan.

GENERAL LAND OFFICE, *April* 25, 1848.

GENTLEMEN: In the instructions from this office of the 16th inst., proof of the compliance with the conditions and stipulations of leases and permits, with visible landmarks and muniments as boundaries to the latter, are required of lessees and permittees as pre-requisites to entries under the law at the reduced minimum of $2 50 per acre. On examining the leases you will perceive that the first condition specified therein, which seems to come within the purview of the law and those instructions, is that "the mines, &c., shall be worked with due diligence and skill;" and the second is the payment of the rent.

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In relation to the first of these conditions I would suggest, that after the opinion of the Attorney General, given on the 18th April, 1846, that these leases were unauthorized by law, and the consequent refusal of the Secretary of War to carry out the regulations previously prescribed, some of the lessees did not work the mines. In such cases the Secretary of the Treasury concurs in the opinions of this office, that the lessees should be permitted to enter to the extent of their lease as set forth in your instructions, where the rent has been paid, as set forth in the second condition and the following instructions.

The Secretary of the Treasury also concurs in the opinion of this office, that lessees and permittees who desire to purchase the lands embraced by their leases and permits, should not be required to pay rent after the time when, according to the terms of the act of 1st March, 1847, they could have done so had the necessary facilities been furnished by the Government, by fixing the land office and appointing the land officers. Hence the mineral agent was this day instructed to settle with the lessees and permittees up to the close of navigation in 1847, for all the ore and mineral raised up to that time, and require rent therefor, and for all raised since, to require a bond to be given for the amount of rent, which will be cancelled upon the entry by the lessee or permittee of the land claimed by him, before the day fixed by the President's proclamation for the commencement of the sale including these lands.

Where permittees, for similar reasons to the foregoing, have given the best designation practicable to the location of their permits with reference to natural objects, leases, &c., with the lengths and courses of their boundaries, it will be considered sufficient as to the requirement of the law, of fixed landmarks and muniments. The other stipulations are similar to those of the lessees, and will be similarly construed, as above directed.

In all cases where persons applied for leases, and failed to obtain them because of the decision of the Attorney General, and the consequent refusal of the Secretary of War to carry out the previous regulations, the persons who so applied will be considered as entitled to the same rights and privileges exactly as if they had obtained them.

The books of the mineral agent will enable you to ascertain all such cases; but should persons apply in relation to whom there is no such evidence, you will receive their application, and hold it in abeyance till you can get information from this office in relation to it.

Very respectfully, your ob't serv't,

RICHARD M. YOUNG,
Commissioner.

Register and Receiver at Sault St'e Marie, Michigan.

Bill of Exceptions.

Circuit Court of the United States for the District of Michigan.

ENOCH C. ROBERTS } ads. JAMES M. COOPER.

Be it remembered, that on the trial of this cause an agreed state of facts, dated Washington city, April 17th, 1854, signed by S. F. Vinton for plaintiff, and Truman Smith for defendant, with all the papers therein referred to and thereto annexed, was read in evidence to the jury, a true copy of which statement, with the papers thereto annexed, is hereto appended.

And there was also put in evidence and read to the jury a statement and stipulation, dated June 24th, 1856, and signed by S. F. Vinton for the plaintiff, and T. Romeyn for the defendant, together with the papers therein referred to and attached thereto, a true copy of which statement, with a copy of all the papers thereto annexed, is hereto appended. The plaintiff objected to the reading of the deposition of John Wilson, and the court excluded the same from the jury, to which ruling the defendant excepted.

The defendant then produced and offered to prove a deed of release from Alfred Williams and wife to the Minnesota Mining Company, dated June 20th, 1856, covering the lands in controversy; and further offered to prove in connection therewith, that at the time when the said Cooper obtained the deed of the premises in controversy from Alfred Williams, the Minnesota Mining Company was in actual and open possession of the same, claiming title under their patent from the United States, and that the said Cooper knew of such claim and occupancy before and at the time of his purchase, and of said conveyance; that he obtained said title from Alfred Williams, he being the naked trustee of John Bacon, and that all the negotiations for the said purchase and the purchase itself were had between said Cooper and Bacon, the said Williams acting under the directions and for the benefit of said Bacon, and having or claiming no personal interest in said lands; that said purchase and conveyance were made for the following purpose, namely: That said Cooper should hold the same in trust for a corporation known as the National Mining Company, all of whose stock was held by said John Bacon; and by the conditions of said sale, the said Cooper was to receive, and did receive, with said conveyance six tenths of the stock aforesaid, and the said Bacon was to retain, and did retain, four tenths of said stock. That the said Cooper purchased said stock and took said conveyance with a full knowledge of the claims and occupancy of the Minnesota Mining Company, and with the intention of prosecuting the title purchased by him, by legal proceedings in this court against the Minnesota Mining Company, for the benefit of the National Mining Company; and that before said conveyance was delivered to him by said Williams, the said Cooper, in conjunction with the said Bacon,

applied to counsel in the city of Detroit, to employ such counsel in the litigation aforesaid, which was to be had with the Minnesota Mining Company.

To which evidence the plaintiff objected, and the court excluded the same, and to the decision of the court excluding the same, said defendant excepted.

The defendant requested the court to charge the jury, that if the jury find the facts given in evidence to be true, they should find for the defendant; which instruction the court refused to give, and to this ruling the defendant excepted.

The defendant further requested the court to charge the jury, that if the land in controversy was surveyed subsequent to the act of Congress of March 1st, 1847, and was mineral land, the same was by the said act reserved and disposed of, so that the right of the State of Michigan could not attach on said survey; which instruction the court refused to give, and to this ruling the defendant excepted.

The defendant further requested the court to charge the jury, that if the land in controversy was at the time of the survey covered by the lease to Joseph L. Hempstead, set forth in the case made, then the same was so disposed of that the right of the State of Michigan could not attach thereto on such survey; which instruction the court refused to give, and to this ruling the defendant excepted.

The defendant further requested the court to charge the jury, that if the lessees complied with the provisions of said lease, so long as the same by its express terms was to continue, and if they subsequently, and up to the time of proving their claim, complied with the instructions and regulations of the department at Washington touching said lands, then their rights were not terminated by the expiring of the lease, by its original terms, but were protected under the act of Congress of September, 1850, and they had a right, upon making their proofs, to enter the land in controversy, and the State had no right thereto; which instructions the court refused to give, and to this ruling the defendant excepted.

The defendant further requested the court to charge, that, upon the facts appearing in the case, the Minnesota Mining Company having continued in possession under their lease, and by permission of the officer of the Department of the United States charged with the leasing said lands, and having in all things complied with the conditions of said lease, the said lease was in law validly extended, and the lands so disposed of during said extension, that the right of the State of Michigan could not attach thereto; which instruction the court refused to give, and to this ruling the defendant excepted.

The defendant further requested the court to charge the jury, that the act of Congress of September, 1850, recognised and confirmed the said lease and the action of the public officers in relation thereto, and the lands so disposed of as to prevent the claim of the State of Michigan from attaching to the same; which instruction the court refused to give, and to this ruling the defendant excepted.

The defendant further requested the court to charge the jury, that if, when said Williams conveyed to said Cooper the premises in question, the said Minnesota Mining Company was in actual and open possession of said lands, claiming title thereto under their patent, the said conveyance was void in law against the said company and all claiming under them; which instructions the court refused to give, and to this ruling the defendant excepted.

The court instructed the jury upon the evidence in the case, that if they found the same to be true, they should render a verdict for the plaintiff; to which refusal and direction the said defendant excepted.

And because none of the said exceptions, so offered and made to the opinions and decisions of the said circuit court, do appear upon the record of the said trial; therefore, on the prayer of the said defendant, the judges of the said circuit court have to this bill of exceptions set their seals, this thirtieth day of June, one thousand eight hundred and fifty-six.

JOHN McLEAN, [SEAL.]
ROSS WILKINS. [SEAL.]

Copy of the agreed statement of facts and all the papers therein, and in the Bill of Exceptions referred to, being 16 in number.

In Circuit Court U. S. for the district of Michigan.

JAMES M. COOPER
vs.
ENOCH C. ROBERTS. } Ejectment.

To relieve both parties from the necessity of making proof of such facts as are supposed to admit of no question, so far as respects their existence, the matters hereinafter specified are prima facie to be taken and admitted to be true: subject, however, to be disproved, rebutted, and their effect invalidated to the same extent and in the same manner as though the proof thereof had been made by either party without entering into this agreement; and the parties respectively are to have the same right to except to the admissibility or relevancy of any of said matters, as though they were offered in evidence by one party and objected to by the other.

On the above conditions it is admitted:

That James M. Cooper, the plaintiff, is a citizen and resident of the Commonwealth of Pennsylvania, and that the defendant, Enoch C. Roberts, is a citizen and resident of the State of Michigan, and is in possession of the premises in dispute.

That the commissioner of the State land office of the State of Michigan did, on the 22d day of January, 1851, advertise for sale for the period of four consecutive weeks from that date, in a newspaper called the "Lansing Journal," published in the city of Lansing, Michigan, certain sections, numbered sixteen, in the Lake Superior land district in that State, claimed by the State of Michigan as school lands, of which the land now in controversy is part; a copy of which advertise-

ment is hereunto annexed, marked No. 1; which period of four weeks was the length of time during which it was the practice of said State land office to advertise the State school lands for sale.

That pursuant to said advertisement, the said commissioner of State lands, at the office of said commissioner in said town of Lansing, did, on the 25th of February, A. D. 1851, sell at public auction to Alfred Williams, for the sum of two thousand five hundred dollars, the said section No. 16, in township No. 50 north, of range No. 39 west, containing six hundred and forty acres, of which section the land now in controversy is part, as will more fully appear by the certificate of Allen Goodridge, deputy commissioner of State lands, of the date of the 25th of February, 1851; a copy of which, marked No. 2, is hereunto annexed.

That at the time of said sale, the said Alfred Williams paid to the treasurer of said State of Michigan the sum of six hundred and forty dollars, in part of the purchase-money of said section, as will appear by said treasurer's receipt, dated February 26th, 1851; a copy of which, marked No. 3, is hereunto annexed.

That on or prior to the 13th of November, A. D. 1851, the said Alfred Williams paid to the State of Michigan the full amount of principal and interest due on said section of land, and obtained the State land commissioner's certificate that he was entitled to a patent for said section of land, as will appear by the certificate of Allen Goodridge, deputy com'r of State lands, of that date; a copy of which, marked No. 4, is hereunto annexed.

That in pursuance of said last-named certificate, the governor of said State of Michigan did, on said 13th of November, A. D. 1851, issue his patent to said Alfred Williams, his heirs and assigns, for said section of land; a copy of which, marked No. 5, is hereunto annexed.

That on the 19th day of May, A. D. 1852, the said Alfred Williams, for the consideration of ten thousand dollars, sold and conveyed, by deed of conveyance duly executed, all of said section numbered sixteen, to said James M. Cooper, his heirs and assigns, except certain parts thereof therein excepted; a copy of which conveyances, marked No. 6, is hereunto annexed, and embraces, as part of the land conveyed and not excepted, the premises now in controversy, and which the said James M. Cooper in fact holds in trust for the National Mining Company.

It is further admitted, on the conditions above expressed, that on the 5th of August, 1844, Walter Cunningham, agent for mineral lands of the United States, gave to Joseph L. Hempstead a permit for the term of one year, to examine and dig for lead and other ores in any part of the lands known as the mineral district, in the region of country south of Lake Superior; a copy of which permit is hereunto annexed, marked No. 7.

That on the 7th of July, A. D. 1845, the said Joseph L. Hempstead transmitted to the then Secretary of War a description and plat of the land he had selected for the purpose of mining thereon, which

called to begin at a stake on the east bank of the Ontonagon river, directly opposite to the point where the west branch of said river enters the main stream, and running east three miles; thence north three miles; thence west three miles; thence south three miles, to the place of beginning; which description was accompanied by the certificate of John Stockton, superintendent of mineral lands, that he had carefully examined the said description, and found that it did not conflict with any other location made under proper authority, and recommended that a lease for the same be granted to the said Hempstead; a copy of which said description, plat, and certificate are on the same sheet of paper with said copy of said permit, marked No. 7, as above.

That on the 16th of September, A. D. 1845, the then Secretary of War granted to said Joseph L. Hempstead, for the term of three years, a lease of the above described tract of land; a copy of which, marked No. 8, is hereunto annexed.

That on or about the 6th of November, A. D. 1850, E. C. Roberts, the present defendant, as agent for the Minnesota Mining Company, applied to the receiver of the land office at Sault Ste. Marie to purchase said leasehold premises, and submitted his proofs for that purpose; which the said receiver refused to act upon, for the reason that the said land office was then closed for want of a register, as will appear by a letter from said receiver to the Commissioner of the General Land Office, dated June 28th, 1851; a copy of which, marked No. 9, is hereunto annexed.

On the 10th of November, 1851, the Minnesota Mining Company, to which said lease in equity belonged, applied again to the register and receiver of the Sault Ste. Marie land district to enter the land covered by the said lease, who, being satisfied with the proofs submitted to them in support of said claim, allowed said company to enter said land in the corporate name of said Minnesota Mining Company, to the extent claimed by them, except so much thereof as lay within the limits of said section No. 16, as will appear by the letter of the register and receiver of said land office, of the date of Nov'r 10th, 1851, reporting their doings in relation to said entry to the Commissioner of the General Land Office; a copy of which, marked No. 10, is hereunto annexed.

The first application to enter said land under said lease was made, as above stated, to said receiver on said 6th of November, A. D. 1850, as appears by a letter from the Commissioner of the General Land Office to S. F. Vinton, dated Sept. 1st, 1853; which letter is hereunto annexed, marked No. 11.

On the 10th day of September, A. D. 1851, the then Secretary of the Interior, on the claim of the State of Michigan, under the compact for her admission into the Union, to be the rightful owner of such sections numbered 16 as might be covered or interfered with by a mineral lease, decided that the act of the first of March, A. D. 1847, entitled "An act to establish a land office in the northern part of Michigan, and to provide for the sale of the mineral lands in the State of

Michigan," did not authorize the holder of a mineral lease to enter section No. 16, and that said section under said compact belonged to said State, as will appear by the letter of the Secretary of the Interior to the Commissioner of the General Land Office, of the date of September 10th, 1851; a copy of which, marked No. 12, is hereunto annexed.

The Minnesota Mining Company took an appeal from so much of the decision of the register and receiver of said 10th of November, A. D. 1851, as refused permission to said company to enter any part of section No. 16 under said lease, which decision of said register and receiver was, on the 15th of December, 1851, confirmed by the Commissioner of the General Land Office; from which last mentioned decision an appeal on behalf of said Minnesota Mining Company was taken to the Secretary of the Interior, who on the 4th of February, A. D. 1852, on the application of the agents of said Minnesota Mining Company, in order to enable said company to test their title to that part of said section which might be embraced within the limits of said lease, by a letter of that date addressed to the Commissioner of the General Land Office, consented that their entry should embrace all the land covered by said lease, but no patent should be issued without a reservation of the right of the State of Michigan to so much of said section number 16 as might be covered by said lease, as will appear by said last named letter; a copy of which, marked No. 13, is hereunto annexed.

On the 9th of April, 1852, a patent was issued to the said Minnesota Mining Company, embracing the land now in controversy, a copy of which, marked No. 14, is hereunto annexed.

The said defendant, Enoch C. Roberts, holds possession of the land in controversy, under the said Minnesota Mining Company as their tenant. The Commissioner of the General Land Office, on the 16th day of April, 1848, issued a letter of instructions to the register and receiver of said land district for their government, in carrying into effect the said act of the 1st of March, 1847, a copy of which is hereunto annexed, marked No. 15. And on the 25th day of the same month, the said commissioner issued a further letter of instructions to said register and receiver for their government, in carrying the said act of the 1st of March, A. D. 1847, into effect, a copy of which last letter of instructions, marked No. 16, is also hereunto annexed.

Printed copies of these letters of instructions were forthwith forwarded by said commissioner to said register and receiver for their government, and the government of all persons of whom they might concern.

Immediately after their receipt at said land office, they came to the knowledge of the owners of said lease.

It is agreed that from the 6th of November, 1850, when the said Minnesota Mining Company first applied to enter said land, until the 10th of September, 1851, the question of the right of the mineral lessees to enter under said act of 1st of March, 1847, section 16, or any part thereof, was pending before the Secretary of the Interior, for his

decision thereon; and by reason thereof, the said Minnesota Mining Company were not permitted to enter the land now in controversy. And after said decision of the 10th of September, 1851, the same being adverse to the right of the lessees to enter said section 16, the said Minnesota Mining Company was by said decision prevented from entering thereof, until the consent of said Secretary was given in said letter, marked No. 13, as above.

S. F. VINTON, *for Plaintiff*.
TRUMAN SMITH, *for Defendant*.

Washington city, April 29th, 1854.

(Copy.)

Public Sale of Primary School Lands.

(Paper No. 1.)

STATE LAND OFFICE, LANSING, *January 22d*, 1851.

Notice is hereby given, that the following described school lands will be offered for sale at public auction at this office, on Tuesday, the 25th day of February, 1851, at 9 o'clock a. m. of that day, at the minimum, and on the terms established by law.

Entire of section 16, T. 50 N., R. 38 west.
Do. do. 16, T. 50 N., R. 39 west.
Do. do. 16, T. 50 N., R. 40 west.

(Signed) PORTER KIBBEE,
Commissioner.

(Copy.)

Primary School Land, No. 3192.—*Certificate B.*

(Paper No. 2.)

In the name of the people of the State of Michigan, I, Porter Kibbee, commissioner of the State land office, agreeably to the provisions of law, hereby certify, that at a public sale, on the 25th day of February, one thousand eight hundred and fifty-one, Alfred Williams, of Oakland county, State of Michigan, for and in consideration of the sum of two thousand five hundred and sixty dollars, purchased the land described as follows, that is to say: Entire of section No. 16, in township No. 50 north, of range No. 39 west, containing six hundred and forty acres, according to the returns of the surveyor general, at four dollars per acre.

And I do further certify, that the consideration received therefor from the said purchaser, is the sum of six hundred and forty dollars; and that the consideration to be paid by the said purchaser, is the sum of one thousand nine hundred and twenty dollars, to be paid at any time hereafter at the option of the purchaser; but the interest of seven per centum upon the whole amount of principal unpaid to be paid annually on the first day of March, or within sixty days thereafter in each and every year at the office of the State treasurer.

Provided, that in case of the non-payment of the interest annually as aforesaid, by the said purchaser, or by any person or persons claiming under him, then this certificate shall be void and of no effect, and all the right, title and interest of the said Alfred Williams, or of any person or persons claiming under him, of, in and to the aforesaid described lands, shall be forfeited and become void:

Provided, further, that the same may be redeemed by paying at the office of the State treasurer, before the time appointed for the sale of said lands at public auction, the amount of arrearages past due, with twenty-five per cent. penalty upon the same; but in case of the failure to redeem as aforesaid, the forfeiture shall be absolute; the rights of the purchaser or of any person or persons claiming under him, shall be forever void and of no effect; and the full title to such land and the possession thereof shall, without any act or proceeding in law or otherwise, revest in the State, which shall immediately after such forfeiture be deemed to be in actual possession thereof, and the said commissioner may re-sell the same, pursuant to the provisions of law.

[SEAL.] Given under my hand and the seal of the State land office, this twenty-fifth day of February, 1851.

(Signed) ALLEN GOODRIDGE,
Deputy Comm'r.

N. B.—No transfer of this certificate is valid unless the assignment is sealed, signed by two witnesses, and acknowledged before some officer authorized to take acknowledgments of deeds.

(*Paper No.* 3.)

STATE TREASURER'S OFFICE, LANSING, *February 26th*, 1851.

$640. Received the within mentioned payment of six hundred and forty dollars.

Countersigned.

(Signed) JOHN SWEGLES, Jr.
Auditor General.

(Signed) J. C. BAILEY,
Deputy State Treasurer.

(Copy.)

(*Paper No.* 4.)

I hereby certify, that the whole amount of principal and interest on the annexed certificate of purchase has been paid according to law, and that the holder thereof is entitled to a patent for the lands described therein, viz: The entire of section No. sixteen in township No. fifty north, of range No. thirty-nine west.

[SEAL.] Given under my hand and the seal of the land office, this 13th day of November, 1851.

ALLEN GOODRIDGE,
Deputy Comm'r of State Land Office.

(*Paper No. 5.*)

In the name of the people of the State of Michigan, to all to whom these presents shall come, greeting:

Whereas, Alfred Williams, of the county of Oakland, Michigan, on the 25th day of February, in the year one thousand eight hundred and fifty-one, purchased from the State of Michigan the lands hereinafter described, pursuant to the laws of said State then in force and in such cases made and provided:

And whereas, the said Alfred Williams has paid for said lands, pursuant to the conditions of said sale and the laws of the State duly enacted in relation thereto, the sum of two thousand five hundred and sixty dollars, and all legal interest thereon accrued, as fully appears by the certificate of the proper officer, now on file in the office of the Secretary of State of the State of Michigan, being certificate No. 3192, for primary school lands:

Now, therefore, I, John S. Barry, governor of said State, in consideration of the premises and by virtue of the power and authority vested in me by the laws of the said State, in such cases made and provided, do issue this patent, in the name and by the authority of the people of the State of Michigan, hereby granting and confirming unto the said Alfred Williams, and to his heirs and assigns forever, the following piece or parcel of land situate in the State aforesaid, to wit: The entire of section No. sixteen (16), in township No. 50 (50) north, of range number thirty-nine (39) west, containing six hundred and forty acres, according to the returns of the surveyor general.

To have and to hold the above described and granted premises unto the said Alfred Williams, and to his heirs and assigns, to his and their sole and only proper use, benefit, and behoof forever, as provided by the laws of said State, against the lawful claim or claims of all persons whatsoever.

In testimony whereof I have caused these letters to be made patent, and the great seal of the State to be hereunto affixed.

Given under my hand at Lansing, this thirteenth day of November, in the year one thousand eight hundred and fifty-one, and of the independence of the United States of America the seventy-sixth.

[SEAL.]

(Signed) JNO. S. BARRY.

By the governor:

ROEL R. GIBSON,
Dep'y Secretary of State.

Recorded Book F, page 479.
(Rec. cxi., D. T. 1854.)

(*Paper No.* 6.)

Copy of Quit-claim Deed—Alfred Williams and wife to James M. Cooper.

This indenture, made the nineteenth day of May, in the year of our Lord one thousand eight hundred and fifty-two, between Alfred Williams and Frances L. Williams, his wife, of Pontiac, Oakland county, Michigan, of the first part, and James M. Cooper, of Pittsburgh, Pennsylvania, of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of ten thousand dollars, to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, do hereby remise, release and forever quit-claim unto the said party of the second part, and to his heirs and assigns forever, all that certain piece or parcel of land situate in the county of Ontonagon and State of Michigan, known and described as section number sixteen (16), in township number fifty (50) north, of range number thirty-nine (39) west, containing six hundred and forty acres, according to the returns of the surveyor general, excepting and reserving, however, from the said section two tracts described as follows, viz: The first tract beginning at the southeast corner of said section sixteen (16), and running thence west forty (40) rods, thence north ninety (90) rods, thence east forty (40) rods, thence south ninety (90) rods to the place of beginning, containing twenty-two and a half acres of land, now occupied by the Peninsula Mining Company.

And the second tract beginning at the northeast corner of said section sixteen (16), running thence west forty (40) rods, thence south ninety (90) rods, thence east forty (40) rods, thence north ninety (90) rods to the place of beginning; containing also twenty-two and a half acres of land; said two tracts having been heretofore conveyed to the Minnesota Mining Company; but these having been in the conveyance of the same reserved from said tract, the rights to all mines or minerals now discovered, or that may hereafter be discovered therein, and the right of working the same, provided such mining operation shall not incommode the working of the engines and mills of the Minnesota Mining Company on said second tract, or obstruct the stream of water thereon, on which their stamp and sawmills are situated; it is intended and hereby provided, that this instrument shall convey all the rights and interests so reserved from said second tract, together with all and singular the hereditaments and appurtenances thereto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, claim or demand whatsoever of the said party of the first part, either in law or equity, of, in and to the above released premises, with the said hereditaments and appurtenances, to have and to hold the said lands and premises, with the appurtenances, to the said party of the second part, and to his heirs and assigns, to the sole and only

proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever.

In witness whereof the said party of the first part have hereunto set their hands and seals the day and year first above written.

ALFRED WILLIAMS, [L. S.]
FRANCES L. WILLIAMS. [L. S.]
CHAS. LIVINGSTON DIBBLE,
For Alfred Williams.

Signed, sealed, and delivered:
JAMES V. CAMPBELL,
E. H. WHITNEY,
DEBORAH K. PHELPS.

STATE OF MICHIGAN,
Wayne county, ss:

On this nineteenth day of May, one thousand eight hundred and fifty-two, before me, a notary public for said county, personally came the above named Alfred Williams, known to me to be the person who executed the foregoing instrument, and acknowledged the same to be his free act and deed.

CHAS. LIVINGSTON DIBBLE,
Notary Public, Wayne county, Mich.

STATE OF MICHIGAN,
County of Oakland, ss:

On the twenty-second day of May, in the year one thousand eight hundred and fifty-two, before me, a notary public in and for said county of Oakland, personally appeared before me, Frances L. Williams, the wife of the within named Alfred Williams, known to me to be the person who executed the within instrument, and on a private examination, separate and apart from her said husband, she acknowledged that she executed the same freely, and without any fear or compulsion of or from her said husband, or any other person.

(Signed) EDWIN H. WHITNEY,
Notary Public in and for Oakland county, Michigan.

REGISTER'S OFFICE,
Houghton county, ss:

Received for record this 28th day of June, A. D. 1852, at 9 o'clock a. m., and recorded in book No. 1 of deeds, pages 237 and 238.

(Signed) JUSTIN SHAPLY,
Register.

(*Paper No.* 7.)

Be it known, that there is hereby granted to Joseph L. Hempstead of Iowa, full permission for the term of one year from the date of these presents, to examine and dig for lead and other ores on any

part of the lands known as the mineral district, in the region of country lying south of Lake Superior, which was acquired by the United States from the Chippewa Indians, by the treaty with them of 4th of October, 1842, and ratified on the tenth day of February last. Provided, that such examination and diggings shall not be made on any tract which may have been selected by any other person or company of persons acting under the authority of the Secretary of War, or of Walter Cunningham, United States agent for mineral lands.

And, if the said Joseph L. Hempstead shall, at any time within the year above mentioned, select a portion or tract of land in said district, which he desires to occupy for mining purposes, which portion must be of a square form of four equal sides, not exceeding three miles each, bounded by due east and west, and north and south lines, in all cases where the boundary is not determined by said lake or some other sheet of water, *or by some other sheet of water*, or by some other location previously made; and shall, at the time of making such selection, mark the corners thereof, and leave a person in charge so as to point out the selection to other persons seeking to make selections; and shall transmit to the Secretary of War, within said year, a description of the tract so selected, accompanied with a plat of survey of the same, exhibiting the courses and lengths of the exterior lines, together with the name and general course of any river, stream, or other water running through, lying within, or bounding the same, together with the bearing and distance of the point of beginning of such survey, from some well known or easily identified natural permanent object; and shall, moreover, keep a true and faithful account of all the ores, of every description, which he shall dig or allow to be dug on any portion of said tract, from the time of selecting the same to the time of execution of a lease, as herein after mentioned, and which description shall, moreover, be accompanied by a certificate of the United States agent aforesaid, that such selection does not interfere with any other location made under proper authority; then, in such case, a lease will be granted, under the seal of the War Department, to the said Joseph L. Hempstead, for the tract so described, for the term of three years, upon his tendering a satisfactory bond in a sum of twenty thousand dollars, conditioned for the faithful performance of the conditions of such lease.

And the lease so to be granted will stipulate that the United States, as party of the first part, may, at any time during the continuance of the lease, select and occupy such part of said tract for military purposes as may be deemed necessary, not exceeding in area one-half of a square mile, and such part also as may be deemed necessary for a mineral agency, not exceeding in area one-eighth of a square mile, and in both cases free of any charge for such occupancy: provided such area or areas shall not include any mine, or lode of mineral, which is being worked at the time when so selected for occupation.

And that the party of the second part shall have full right, during the continuance of the lease, to dig and take from any part of the lands

so leased, which are not occupied for military purposes, or as a mineral agency, all lead, copper, or other ores, which they may find thereon; and may erect on said lands, at their own proper costs, such buildings, furnaces, mills, and other works, as may be necessary for the accommodation of themselves, their agents and workmen, and for the raising of the ores, and extracting metals therefrom; and, for these purposes alone, may use all such timber, stone, firewood, and other fuel, as may be necessary, found on those parts of said tract which may not have been selected as aforesaid for military purposes, or for a mineral agency. And that said party of the second part will commit no waste, nor suffer it to be committed; and that at the termination of the lease the tenant or tenants shall have no claim upon the Government of the United States for payment or remuneration for buildings or improvements erected upon the said demised premises, or expenses incurred in their erection.

And in the lease so to be granted, the said party of the second part, for himself, his heirs, representatives, and assigns, will covenant, promise and agree, that the mines, lodes, and deposits of ore, discovered, or which may be discovered on the land so leased, shall be worked with due diligence and skill, it being fully understood that the motive for granting the lease is, that these lands shall be worked for mining purposes, and are not to be held as farming lands; and that all the ores, or mineral, dug on any part of the land so leased, either by them or under their permission, shall be smelted within said district of country acquired by the treaty aforesaid, and that no part of the same shall be transported in their crude state beyond the boundary of that district, without special permission in each instance from the party of the first part; that they will keep, or cause to be kept, in a book or books to be provided by them for that purpose, a full and true account of all of each kinds of ore, or mineral, which may be dug by them, their servants and assistants, and by each person, or company of persons, whom they may allow to mine or dig on the land so leased, together with a full, and true, and full account of all metals extracted from said ores or minerals. And that they will, moreover, make monthly returns to the War Department, or to such officer or agent as may be named by the party of the first part, and in such form as may be prescribed by said party, which returns shall show the quantity of all ores or minerals dug on the land so leased, not only by themselves and their immediate servants and assistants, but by each person, or company of persons, distinctly, whom they may allow to mine or dig thereon, together with the full quantity of metal extracted in each case from all ores or mineral so dug, and which books and returns shall be verified by oath in due form of law, if required, by the party of the first part. And, further, that any superintendent, or other agent acting under the authority of the party of the first part, may reside at, or visit at all times, any or all of the mines, mills, or furnaces, on the tract of land so leased, and that every facility shall be afforded to him of examining every operation of mining and smelting carried on upon said

land; and that the book or books, hereinbefore mentioned, shall be at all times open to his inspection.

And the said party of the second part, for himself, his heirs, representatives and assigns, will further covenant, promise and agree, to pay, or cause to be paid, semi-annually, (or oftener if required,) as rent to the United States, for the lands so leased, and deliver the same free of costs at Fort Brady, on the Sault Ste. Marie, at Copper Harbor, on Point Keweena, at the Ontonagon river, at the La Pointe agency, or other place on the southern shore of Lake Superior, as may be from time to time determined upon by the party of the first part, and to such person as may be appointed to receive it, six pounds out of every one hundred pounds of the metal which may be extracted from all the ores or minerals dug on the land so leased; and that in all these cases this rent shall be paid in metal in the state of refinement to which it may be brought by or for them, by the last refining process to which it may be subjected in said mineral district, and shall be selected of a fair average quality from the better kinds intended by the said lessees for use or sale in market. And further, that they will keep a true account, and make returns in manner hereinbefore mentioned, of all the ores or mineral which they may receive for the purpose of smelting, or may purchase from any other person or company mining in said district, beyond the bounds so leased to them, with a true account of the metal extracted from it, and the name of the person or company from whom they may receive it, and the locality of the mine from which it was dug, and will deduct and pay over to the agent of the United States, in manner aforesaid, six pounds out of every one hundred pounds of all the metal so extracted.

And in the event that they shall not elect to smelt the ores or minerals that may be dug from the lands mentioned in the lease, that then in such case they shall deliver, or cause *or cause* it to be delivered, to a smelter duly licensed by the United States, or to some one holding a lease of this description and to none other, and shall allow him or them to deduct therefrom sufficient to enable him or them to pay over the rents at the places and in the manner hereinbefore provided.

And the lease so to be granted will further stipulate, that within three months after the expiration of the three years, for which the lease is granted, the said party of the second part, his heirs, representatives, and assigns, will remove from said tract and surrender peaceable possession of the same, unless they shall, within said three months, obtain a renewal of said lease as hereinafter provided. And further, that upon the failure of the said party of the second part, his heirs, representatives, and assigns, to conform to and carry into effect any of the provisions and agreements above stipulated to be performed by the said party of the second part, that the lease shall be void and forfeited, and that the said party of the first part may re-enter, take possession of, and lease the above mentioned tract, or any part thereof, to others. And that upon written notice being served by any authorized agent of the party of the first part, setting forth that said lease has been deemed

to have been forfeited, for cause mentioned in said notice, such notice being given to any partner or agent of said party of the second part, his heirs, representatives, or assigns, or left on said tract in default of any such person being present, the said party of the second part will, within three months, remove from said tract and surrender peaceable possession of the same, unless they shall in the mean time have remedied the defect complained of, or made such explanations as shall have induced the Secretary of War, or other officer acting under the authority of said party of the first part, to remit the forfeiture and to grant them written permission to remain; and, at the end of said three years, if Congress shall not in the mean time have passed a law directing a sale or other disposition of these lands, and the party of the second part shall have fully complied with the conditions set forth in such lease, and shall tender a satisfactory bond, in a sum not less than twenty thousand dollars, conditioned for the faithful performance of a new lease, then said party of the second part, or their assigns, shall be entitled to a renewal of such lease for the further term of three years, upon the same terms and conditions, except that for such second term of three years, the rent stipulated to be paid shall be ten per cent. of the metal extracted; and, at the end of this second term of three years, if Congress shall not then have passed a law directing the sale or other disposition of these lands, and the party of the second part, or their assigns, shall have complied with the stipulations of such second lease, they shall be entitled to it for a further term of three years, upon furnishing in the same manner a like new bond for the performance of that lease.

Given at Copper Harbor, 5th day of August, 1844.

(Signed) WALTER CUNNINGHAM,
Mineral Agent, &c.

By virtue of the authority given me by the foregoing permit, I have selected a tract for the purpose of mining thereon, of which tract the following is a true description:

Beginning at a stake on the east bank of the Ontonagon river, directly opposite the point where the west branch of said river enters the main stream, and running thence east three miles; thence north three miles; thence west three miles; thence south three miles to the place of beginning; and pray that a lease may be granted for the same.

Dated at Copper Harbor, this 7th of July, 1845.

(Signed) JOSEPH L. HEMSTED.

I have carefully examined the description of the tract above applied for, and find that it does not interfere with any other location made under proper authority, and I recommend a lease be granted as prayed for.

Dated at Copper Harbor, this eleventh day of July, 1845.

(Signed) JOHN STOCKTON,
Sup. Mineral Lands.

1998

[*For plat see original, page* 43.]

(*Paper No.* 8.)

(Entered at the Ordnance office as lease No. seventy-eight.)

This indenture, made in duplicate and entered into this sixteenth day of September, in the year of our Lord one thousand eight hundred and forty-five, between the United States of America, acting herein by William L. Marcy, Secretary of War, of the first part, and Joseph L. Hemstead, of , in the Territory of Iowa, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the rents, covenants, and agreements hereinafter mentioned, doth by these presents, and by and with the approbation of the President of the United States, grant, lease, and farm, unto the said party of the second part, his heirs, representatives, and assigns, (they being citizens of the United States,) for the full term of three years, from the date hereof, a certain tract of land, for the purpose of mining lead and other ores which may be found thereon, which tract of land hereby leased is situate within the region of country on the southern shore of Lake Superior, and is described as follows, viz:

Beginning at a stake on the east bank of the Ontonagon river, directly opposite to the point where the west branch of said river enters the main stream, and running thence east three miles; thence north three miles; thence west three miles; thence south three miles to the place of beginning:

To have and to hold the same for the term aforesaid, unto the said party of the second part, his heirs, representatives, and assigns, upon the following conditions, viz: That the said party of the first part may, at any time during the continuance of this lease, select and occupy such part of said tract for military purposes as may be deemed necessary, not exceeding in area one-half of a square mile, and such part also as may be deemed necessary for a mineral agency, not exceeding in area one-eighth of a square mile, and in both cases free of any charge for such occupancy; provided such area or areas shall not include any mine or lode of mineral which is being worked at the time when so selected for occupation. And the said party of the second part shall have full right during the continuance of this lease to dig and take from any part of the lands hereby leased which are not occupied for military purposes, or as a mineral agency, all lead, copper, or other ores which he may find thereon, and may erect on said lands, at their own proper cost, such buildings, furnaces, mills, and other works, as may be necessary for the accommodation of themselves, their agents,

and workmen, and for the raising of the ores, and extracting metals therefrom; and, for these purposes alone, may use all such timber, stone, firewood, and other fuel, as may be necessary, found on those parts of said tract which may not have been selected for military purposes or for mineral agency. And the said party of the second part covenants that he will commit no waste, nor suffer it to be committed, and that at the termination of this lease, the said tenant or tenants shall have no claim upon the Government of the United States for payment or remuneration for buildings or improvements erected upon the said demised premises, or expenses incurred in their erection.

And the said party of the second part, for himself, his heirs, representatives, and assigns, hereby covenants, promises, and agrees, that the mines, lodes, and deposits of ore discovered, or which may be discovered on the land hereby leased, shall be worked with due diligence and skill, it being fully understood that the motive for granting this lease is that these lands shall be worked for mining purposes, and are not to be held as farming lands; and that all the ores or mineral dug on any part of the land so leased, either by himself or others under his permission, shall be smelted within the district of country aforesaid, and that no part of the same shall be transported in their crude state beyond the boundary of that district, without special permission from the party of the first part; and that they will keep or cause to be kept, in a book or books to be provided by them for that purpose, a true and full account of all of each kind of ore or mineral which may be dug by them, their servants, and assistants, and by each person or company of persons whom they may allow to mine, or dig on the tract of land so leased, together with a true and full account of all the metals extracted from said ores or mineral, and that they will moreover make monthly returns to the War Department, or to such officer or agent as may be named by the party of the first part, and in such form as may be prescribed by that party; which returns shall show the quantity of all ores or mineral dug on the land so leased, not only by themselves and their immediate servants and assistants, but by each person or company of persons distinctly, whom they may allow to mine or dig thereon, together with the full quantity of metal extracted in each case from all ores or minerals so dug; and which books and returns shall be verified by oath in due form of law, if required by the party of the first part. And further, that any superintendent or other agent, acting under the authority of the party of the first part, may reside at, or visit at all times, any or all of the mines, mills, or furnaces on the tract of land so leased, and that every facility shall be afforded to him of examining every operation of mining and smelting carried on upon said land, and that the book or books hereinbefore mentioned shall be at all times open to his inspection.

And the said party of the second part, for himself, his heirs, representatives, and assigns, hereby covenants, promises, and agrees to pay or cause to be paid, semi-annually, (or oftener, if required,) as rent to the United States for the use of the lands so leased, and deliver the

same free of cost at Fort Brady, on the Sault Ste. Marie, at Copper Harbor, on Point Keweena, at the Ontonagon river, at the La Pointe agency, or at such other place on the southern shore of Lake Superior as may be from time to time determined upon by the party of the first part, and to such person as may be appointed to receive it, six pounds out of every one hundred pounds of the metal which may be extracted from all the ores or mineral dug on the land so leased, and that in all these cases this rent shall be paid in metal in the state of refinement to *to* which it may be brought by or for them by the last refining process to which it may be subjected in said district; and shall be selected of a fair average quality from the better kinds intended by the said lessees for use or for sale in market. And further, that they will keep a true account, and make returns in manner hereinbefore mentioned, of all the ores or mineral which they may receive for the purpose of smelting, or may purchase from any other person or company, mining in said district, beyond the bounds so leased to them, with a true account of the metal extracted from it, and the name of the person or company from whom they may receive it, and the locality of the mine upon which it is dug, and will deduct and pay over to the agent of the United States, in manner aforesaid, six pounds out of every one hundred pounds of all the metal so extracted. And in the event that they shall not elect to smelt the ores or mineral that may be dug from the land mentioned in this lease, that then, in such case, they shall deliver or cause it to be delivered to a smelter duly licensed by the United States, or to some one holding a lease of this description, and to none other, and shall allow him or them to deduct therefrom sufficient to enable him or them to pay over the rents at the places and in the manner hereinbefore provided.

And it is fully understood and agreed between the parties to this lease, that within three months after the expiration of the three years for which this lease is granted, the said party of the second part, his heirs, representatives, and assigns, will remove from said tract, and surrender peaceable possession of the same, unless they shall within said three months obtain a renewal of this lease, as hereinafter provided. And, further, that upon failure of the said party of the second part, his heirs, representatives, or assigns, to conform to, or carry into effect, any of the promises and agreements above stipulated to be performed by said party of the second part, that this lease shall be void and forfeited, and the said party of the first part may re-enter, take possession of, and lease, the above-mentioned tract, or any part thereof, to others.

And it is further understood, that upon written notice being served by any authorized agent of the party of the first part, setting forth that this lease is deemed to be forfeited for cause mentioned in said notice, such notice being given to any partner or agent of said party of the second part, his heirs, representatives, or assigns, or left on said tract in default of any such person being present; and the said party of the second part hereby covenants, promises, and agrees for himself, his heirs, representatives, and assigns, that they will, within three months,

remove from said tract and surrender peaceable possession of the same, unless they shall in the mean time have remedied the defect complained of, or made such explanations as shall have induced the Secretary of War, or other officer acting under the authority of the said party of the first part, to remit the forfeiture and to grant them written permission to remain.

And the said party of the first part hereby stipulates and agrees, that at the end of said three years, if Congress shall not in the mean time have passed a law directing the sale or other disposition of these lands, and the said party of the second part, or their assigns, shall have fully complied with the conditions on their part set forth in this lease, and shall tender a satisfactory bond in a sum not less than twenty thousand dollars, conditioned for the faithful performance of a new lease, then said party of the second part, or their assigns, shall be entitled to a renewal of this lease for the further term of three years upon the same terms and conditions, except that for such second term of three years the rent stipulated to be paid shall be ten per cent. of the metal extracted; and at the end of this second term of three years, if Congress shall not then have passed a law directing the sale or other disposition of these lands, and the party of the second part, or their assigns, shall have complied with all the stipulations of such second lease, they shall be entitled to a renewal of it for the further term of three years, upon furnishing in same manner a like new bond for the performance of that lease.

In witness whereof the said Secretary of War, acting for the party of the first part, as aforesaid, hath hereunto set his hand, and caused the seal of the War Department to be affixed, and the parties of the second part have set their hands and seals the day and year first above written.

[SEAL.]

(Signed) JOSEPH L. HEMSTED, [SEAL.]
By his attorney, JNO. H. KINZIE.

W. L. MARCY.

Signed and sealed by Joseph L. Hemsted in presence of—
C. K. GREENE,
GEO. C. BATES.

GENERAL LAND OFFICE, *Aug.* 31*st*, 1853.

I, John Wilson, Commissioner of the General Land Office, do hereby certify that the annexed are true and literal exemplifications from the originals on file in this office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written. [SEAL.]

(Signed) JOHN WILSON,
Commissioner of the General Land Office.

(*Paper No.* 9.)

RECEIVER'S OFFICE, SAULT STE. MARIE, MICHIGAN,
June 28, 1851.

To the COMMISSIONER OF THE GENERAL LAND OFFICE, WASHINGTON.

I hereby certify that Mr. E. C. Roberts, as agent for the Minnesota Mining Company of Michigan, did apply to me, as receiver of the land office, on or about the sixth day of November last, to purchase their location, and submitted to me their proofs, and all the necessary papers for that purpose. But it was advised by me that he could not prove up their lease, and make payment for the same, the land office then being closed for the want of a register.

(Signed) HENRY ACKER,
Receiver.

(*Paper No.* 10.)

LAND OFFICE, SAULT STE. MARIE, *Nov.* 10., 1851.

Hon. J. BUTTERFIELD, COMMISSIONER, &c.

SIR: The Minnesota Mining Company having applied to this office to enter the lands covered by lease No. seventy-eight, under protest as to their right to the portion of section No. 16 claimed by them, being the east half of the northeast and east half of the southeast quarters of said section, and we, being fully satisfied by the proofs submitted to us in support of their claim of its validity under the law, have allowed the entry in the corporate name of said company of the lands within the limits of said lease to the extent claimed by them, excepting section 16; one of the papers connected with their proof being a conveyance from the Ontonagon Mining Company to Clement March, of one-half of said leased lands, which has been on file in this office, but was returned to the agent for the purpose of correction, has miscarried or been lost, as is supposed, in transmission; as the conveyance has been once upon file we did not think proper to withhold the entry on this account, being advised that the company will supply the defect if the document is not soon found, by other proof or proof of loss at the General Land Office.

Very respectfully, your obedient servants,
ANDREW BACKUS,
Register.
HENRY ACKER,
Receiver.

(*Paper No.* 11.)

GENERAL LAND OFFICE, *Sept.* 1*st*, 1853.

SIR: As requested by your letter of the 29th ult., I have the honor to enclose herewith certified copies of a letter from the receiver at Sault Ste. Marie, dated the 28th of June, 1851, and from the register and

receiver at Sault Ste. Marie, dated 10 Nov., 1851, both in relation to the application of the Minnesota Mining Company to enter the land covered by their lease.

I also certify, as requested, that as appears from the files of the office, the first application made by that company to enter the land claimed by them, was on the 6th November, 1850.

With great respect, your ob't serv't,

JOHN WILSON, *Comm'r.*

Hon. S. F. VINTON.

Care of C. B. Goddard, Zanesville, Ohio.

(Copy.)

(*Paper No.* 12.)

D. OF I., *Sept. 10th*, 1851.

SIR: I have examined the claim of the State of Michigan, under the compact for her admission into the Union, vs. Certain Lessees under the act of 1st of March, 1847, to sections numbered 16, which were the subject of your report to me of the 16th of June last.

The first proposition in the act of Congress of 23d June, 1836, for the admission of Michigan into the Union as a State, is, "That section numbered 16, in every township of the public lands, and where such section has been sold, or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to the State for the use of schools."

This, with the other propositions of the act of June 23d, 1836, were to be "offered to the legislature of the State of Michigan for their acceptance or rejection," and if accepted under the authority conferred on the said legislature by the convention which formed the constitution of the State, were to be "obligatory upon the United States."

These propositions were accepted, and the irrevocable ordinance required by the 5th proposition was provided by an of the legislature of Michigan, approved the 25th of July, 1836. On the 1st March, 1847, Congress passed "An act to establish a land office in the northern part of Michigan, and to provide for the sale of mineral lands in the State of Michigan." The second section of that act requires that a geological examination and survey of the lands comprising this new land district should be made, and that such lands as might be found to contain copper, lead and other valuable ores, to be exposed for sale, giving six months' notice of the time and place; and that all the lands embraced in said district not reported as containing valuable ores, "should be sold in the same manner as other lands," under the laws then in force for the sale of public lands, "excepting and reserving from such sales section 16 in each township, for the use of schools, and such reservations as the President shall deem necessary for public uses."

This third section provides that all persons who are in possession, by actual occupancy, of any portion of the district described in the first

section, whether under authority of a lease or permit from the Secretary of War, or not, for the purpose of mining thereon, may purchase the same under certain conditions and restrictions.

Under the law of 1st March, 1847, a part of sections (16) sixteen, in townships 50 and 58 N., of ranges 39 and 30 W., respectively, is claimed under a lease from the Secretary of War, while the State claims under the first proposition of the act of 23d June, 1836, for her admission into the Union.

The questions which arise in this case are purely legal, being as to the proper construction of the acts of 1836 and 1847. The first proposition of the act of June, 23d, 1836, which was accepted by the State of Michigan, and thereby became obligatory upon the U. States, is in these words: "That section numbered 16, in every township of the public lands, and where such section has been sold, or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to the State for the use of schools."

You contended that this language does not amount to a present grant, and that its true meaning and intent are, that sec. 16 in every township, which, upon being surveyed, shall be found not to have been sold, or otherwise disposed of, shall be granted for the use of schools. In this I do not concur. I regard it as an absolute grant of every 16th section, which had not, on the 23d June, 1836, been sold or otherwise disposed of, whether then designated by survey or not; and the fact that the same language was used in the admission of Ohio into the Union in 1802, and in the admission of all the other States subsequent to that time, has passed to the State's title to sections 16, without further legislation. The issuing of a patent, or other action, by the general land office, shows that it has always been regarded as a present grant.

It is also contended, that this construction of the act of 1836 will render the act of 1st March, 1847, nugatory; that the act of 1847 grants certain privileges to, and confers certain rights upon, occupants of these mineral lands; and that under Attorney General Legare's opinion of 29th April, 1842. the Executive is bound to execute a law of Congress, where the will of that body is clearly expressed, even though the provisions of that law are inconsistent with previous legislation.

Where a law of Congress is clearly inconsistent with prior legislation, I agree with Mr. Legare, that the Executive is bound to execute it; but in construing the subsequent law, we must construe them as statutes upon the same subject in *pari materia*, and if possible make them harmonize, so that Congress may not be charged with injustice or absurdity. But I do not regard the act of 1847 as inconsistent with that of 1836, nor as containing language sufficiently ambiguous to give rise to serious doubts as to its true intent and meaning.

The act of 1836 had granted to the State all sections numbered 16 which had not been sold or otherwise disposed of; and it would not have been constitutional or just in Congress in 1847 to violate that law or annul the grant made by solemn compact with the State; and

the concluding portion of the 2d section of the act of 1st November, 1847, was designed in my opinion to exclude from its operation all 16th sections, and such reservations as the President might deem necessary for public uses, whether such sections or reservations were mineral or agricultural lands.

Without going further into the subject, it being deemed unnecessary, your decision of the 22d April last, adverse to the claim of the State of Michigan to the 16th sections in the mineral region, is reversed, and the papers which were submitted with your letter of the 16th June last are herewith returned.

I am, &c.,

(Signed) A. H. H. STUART, *Sec'y*.

COM'R GEN'L LAND OFFICE.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *Sept. 2d*, 1853.

The above and foregoing is a true copy from the records of this Department.

R. McCLELLAND, *Secretary*.

(*Paper No.* 13.)

Order of Secretary of Interior for issue of patent to Minnesota Mining Company of that part of sec. 16, *T.* 50 *north, of range* 39 *west, as is covered by Mineral Lease, No.* 78.

(Copy.)

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *February 4th*, 1852.

SIR: In order that their clients may have a standing in court to test their title with any adverse party claiming under the State of Michigan, Messrs. Eldridge, Platt, and Stewart have made application to me by way of appeal from your decision of the 15th of December last, for permission to enter that portion of section 16, in township 50 north, of range 39 west, Sault Ste. Michigan, covered with other lands, by mining lease No. 78.

While I adhere to and re-affirm the views expressed in my decision of the 10th of September last, with respect to the validity of their claim to said section 16, I have consented that the entry shall embrace all the land covered by the lease, but that no patent shall be issued without a reservation of the right of the State of Michigan to the disputed portion of section 16, covered by the lease, and you will please instruct the land officers at Sault Ste. Marie accordingly.

I am, sir, very respectfully, your ob't serv't,

(Signed) ALEX. H. H. STEWART.

THE COMMISSIONER OF THE GENERAL LAND OFFICE.

2002

(*Paper No.* 14.)

Patent to Minnesota Mining Company, reserving to the State of Michigan its right to the east half of N. E. and S. E. quarter of sec. 16, *T.* 50 *north, of R.* 39 *west, in Sault Ste. Marie land district.*

(Copy.)

Certificate No. 941.

The United States of America, to all to whom these presents shall come, greeting:

Whereas the Minnesota Mining Company of Michigan has deposited in the General Land Office of the United States a certificate of the register of the land office at Sault Ste. Marie, whereby it appears that full payment has been made by the said Minnesota Mining Company, according to the provisions of the act of Congress of the 1st of March, 1847, entitled "An act to establish a land office in the northern part of Michigan, and to provide for the sale of mineral lands in the State of Michigan," and the act of Congress of the 26th September, 1850, entitled "An act to reduce the minimum price of the mineral lands in the Lake Superior district, in Michigan, and in the Chippewa district, in Wisconsin," for the east half of the southeast quarter of section nine, the south half of section ten, the south half of section eleven, the southwest quarter and the west half of the southeast quarter of section twelve, the west half *the west half* of the northeast quarter, and the west half of the southeast quarter of section thirteen, the sections fourteen and fifteen, the east half of the northeast quarter and the east half of the southeast quarter of section twenty-one, the sections twenty-two and twenty-three, the west half *the west half* of the northeast quarter and the west half of the southeast quarter of section twenty-four, the northwest quarter and the west half of the northeast quarter of section twenty-five, the north half of sections twenty-six and twenty-seven, the lots numbered one and five of section twenty-eight, and the east half of the northeast quarter and the east half of the southeast quarter of section sixteen, in township fifty north, of range thirty-nine, in the district of lands subject to sale at Sault Ste. Marie, Michigan, containing five thousand seven hundred and ninety-four acres and eighty hundredths of an acre, being the lands included in the original survey of lease number seventy-eight, as near as may be, conforming to the lines of the public surveys of sections and subdivisions thereof, according to the official plat of the survey of the said lands returned to the General Land Office by the surveyor general, which said tracts have been purchased by the said Minnesota Mining Company.

Now, know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these

presents do give and grant unto the said Minnesota Mining Company, and to their assigns, the said tracts above described: to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto said Minnesota Mining Company and to their assigns forever, reserving any right which the State of Michigan may have in and to the east half of the northeast quarter and the east half of the southeast quarter of section sixteen, in township fifty north, of range thirty-nine west, above described, under and by virtue of the provisions of the first section of the act of Congress of 23d June, 1836, entitled "An act supplementary to the act entitled 'An act to establish the northern boundary line of the State of Ohio, and to provide for the admission of the State of Michigan into the Union on certain conditions.'"

In testimony whereof, I, Millard Fillmore, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be [L. S.] hereunto affixed. Given under my hand, at the city of Washington, the ninth day of April, in the year of our Lord one thousand eight hundred and fifty-two, and of the independence of the United States the seventy-sixth.

MILLARD FILLMORE.

By the President:

By ALEX'R McCORMICK,
Asst. Sec'y.

JOS. S. WILSON,
Acting Recorder of the General Land Office ad interim.

Recorded in Miscellaneous Patents, vol. 3, pages 72, 73 and 74.
(Rec. cxi, D. T., 1854.)—3

(*Paper No.* 15.)

Instructions to Land Officers at Sault Ste. Marie, Michigan.

GENERAL LAND OFFICE, *April* 16, 1848.

GENTLEMEN: I have to call your especial attention to the act of 1st March, 1847, establishing the land district, the charge of which has been placed under your care.

The second edition of that act requires that the lands in your district shall be separated into two classes, viz.: Such as may contain copper, lead, or other valuable ores, the minimum price of which is fixed at five dollars per acre, except to lessees, permittees, and occupants, in whose favor, under certain restrictions, the minimum is reduced to half that sum per acre; and the agricultural lands, or those reported as not containing copper, lead, or other valuable ores, which are directed to be sold in the same manner as other lands, under the laws now in force for the sale of the public lands, excepting and reserving from such sales sections sixteen in each township for the use of schools, and such reservations as the President shall deem necessary for public uses; the

minimum price of these lands, of course, is $1 25 per acre. For your guidance and direction in the sales of the latter, full directions have been sent you in the sales of the former; you will be governed by the following directions:

All the lands reported to you by Dr. C. T. Jackson, the gentleman appointed by the Secretary of the Treasury to make a geological examination and survey of your district, as containing copper, lead, or other valuable ores, you will mark upon your township plats, and in the margin of your tract-books, the letter M., to designate them as mineral lands. Where section sixteen is so reported, and where it is included in the limits of a lease or permit, it will not be reserved for school purposes; in all other cases it will be so reserved.

The Secretary of the Treasury has prescribed the following rules for your government, as to the proof which shall be made to you of the possession and occupancy of the mine or mines claimed by individuals under the third section of this act, and the evidence which shall be received of the payment of all rents due the United States, before such persons shall be permitted to enter the land claimed by them, to wit:

1st. Where persons claim under a lease from the Secretary of War, they must produce and file with you the duplicate of their lease.

2. They shall prove to your satisfaction, by the affidavits of two or more disinterested credible witnesses, sustained by their own depositions, that they are in possession of the land described by that lease by actual occupancy for the purpose of mining thereon.

3. They shall prove in like manner that they have complied with all the conditions and stipulations of said lease, except as to the payment of the rent due the Government; on this point the certificate of the mineral agent, that the claimant has paid the whole of the amount due by him to the Government, or that no mineral of any value has been raised from the land, and hence there is no rent due, will be sufficient evidence.

4. Persons claiming under a written permit from the Secretary of War shall produce their permits and file them with you.

5. They shall prove, in the manner directed in the second rule above, that they have visible landmarks and muniments, as boundaries on the lands claimed by them.

6. They shall prove, in like manner, that they have complied with the conditions and stipulations contained in those permits.

7. All persons who shall prove, in like manner, that they are in possession, by actual occupancy, of a mine or mines, actually discovered before the passage of this act, and who shall produce a certificate of the mineral agent that they have paid the same per centum of rents as those who hold under leases, or that no mineral has been raised, and, therefore, that no rent has accrued, shall be permitted to enter and purchase one section of land, and not less, to include such mine or mines discovered and occupied as aforesaid.

8. Should any of the claimants be dissatisfied with your decision on their claims, they must state that fact to you in writing within ten days

after the decision is made, and take an appeal to the Secretary of the Treasury, stating succinctly and distinctly the grounds and reasons for their objections. This appeal you will forward to this office with all the evidence in the case, accompanied by a report from you of all the facts, and the reasons for your decision.

9. The testimony prescribed in the foregoing rules may be taken before yourselves, a justice of the peace, or notary public; but, if before either of the two last mentioned officers, the age, character, and credibility of the witnesses must be certified by him. The fact that the justice of the peace was duly commissioned and qualified at the time of taking the depositions must be certified by the clerk of the proper court under seal, and the acts of the notary must be attested by his seal.

The price of the land to each individual of those classes of claimants will be two dollars and fifty cents per acre.

The term "occupancy" in this act, and in the second of the foregoing rules, has an important bearing in the cases which may be presented for adjudication, and it is found in similar connection with the same term used in the pre-emption acts of 1830 and 1834, the true import of which has caused considerable discussion. I refer you, for a full explanation of that term, to the opinions of the Attorney General of 21st June, 1836, Part 2 of Laws, Instructions, and Opinions, page 97, and of 29th March, 1837, same volume, page 108.

As the action of this office in relation to the matter since those opinions were given has been based on them, you will also be governed by them.

That you may understand the conditions and stipulations of these leases and permits, proof of which is required by the third and sixth of the foregoing rules, blank forms of those leases and permits are herewith enclosed. Cases may arise where the claimants were prevented, prior to the passage of this act, from complying with all the conditions and stipulations of these leases and permits by the opinion of the Attorney General, that they were not authorized by law, and the consequent refusal of the War Department to carry out the system previously established. In all such cases where you are satisfied that the parties were thus prevented from fully complying with the conditions and stipulations of their leases and permits, you will permit their entries under the decision in the case of Robert Spiers—Part 2, Laws, Instructions and Opinions, page 639.

Lessees or permittees will not be permitted to relinquish or waive their rights under their leases or permits, and enter as mere settlers. Those leases or permits will be regarded as reserving the land from the entry or sale of every kind, except by the parties holding them, until they have expired by the lapse of time or voluntary surrender; and if they expire before the day of sale, then till that day, when they will be offered as unclaimed lands.

These lessees or permittees may enter the lands to which they establish a claim under the rules herein prescribed, at any time during the continuance of such lease or permit, and when they expire before the

public sale of the lands including their claim, then till the day before the period fixed by the President's proclamation for the commencement of such sale, to the extent of such lease or permit, where the original survey of it, and the lines of the public surveys, are coincident.

Where they are not, it has been decided by this office, with the concurrence of the Secretary, as a general principle, that "where the lands of a lease or permit include the greater part of a legal subdivision, the owner of such lease or permit will be required to take the whole of that subdivision; and where the greater part of a subdivision is outside the limits of a lease or permit, that the whole of such subdivision be excluded from that lease or permit, except where the owner of such lease or permit shall thereby be deprived of valuable improvements, when he shall be authorized to take the whole of such subdivision. Should cases arise where the owners of contiguous leases would be injuriously affected by this last principle, and one or the other will be compelled by it to lose a portion of his improvements, preference will be given to the first occupant.

Those settlers whose cases are embraced by the seventh of the foregoing rules, can enter a tract to which they establish a right, under that rule, at any time before the day appointed by the President's proclamation for the commencement of the sale of the lands included in such tract. Their entry may be either of a technical section, or two contiguous half sections, or four contingent quarter sections, forming the compact body of the shape and area of a section; and, if two or more persons are in possession of the same section, the first occupant shall be entitled to a preference, unless the same can be so divided by legal subdivisions, as to give to each the discovery claimed by him. In this case quarter sections will be considered legal subdivisions. You will write at the top of the certificates issued for any of the before mentioned claims, the words "lease," "permit," or "pre-emption," as the case may be, "Act of 1st March, 1847," and for your services in any one, and all of such cases, you will be entitled to a fee of one dollar, to be paid by the claimant on the issuing of the certificates.

The proof in each of these cases will be forwarded to this office with a proper certificate.

In offering these mineral lands at public sale, you will be careful to withhold all legal divisions and sub-divisions, upon which there may be an outstanding lease or leases from the Secretary of War, unexpired and undetermined, and which are actually occupied for mining purposes, and the occupants of which have complied with all the requisitions of such lease or leases, and continue to perform the same; and where the owners of those leases or permits do not relinquish them, after the public sale, you will report a list of all the lands thus withheld, showing the reason for that action. These lands will be offered in quarter or fractional quarter sections, in the same manner and order as the agricultural lands are offered, and all fractional quarter sections will also be offered separately, whatever may be their area. For all these lands the minimum price will be five dollars per acre. On the

top of all the certificates issued for any of these lands, you will write the words "mineral, act of 1st March, 1837," and also "public sale," when they are so sold; when they are sold at private entry the words "public sale" will be omitted.

Should you have good and sufficient reason to believe, or are credibly informed, that combinations have been formed to prevent fair competition at the public sales, you will notify the offending parties of the provisions of the 4th and 5th sections of the act of 31st March, 1830, part 1, Laws, Instructions, and Opinions, page 46; and, if the offence is continued or renewed, you will immediately stop the sale, and ascertain, as far as practicable, the names of the offenders and their places of residence, that they may be prosecuted under that law.

Very respectfully,

Your obedient servant,

RICHARD M. YOUNG,

Commissioner.

Receiver and Register, Sault Ste. Marie, Michigan.

(*Paper No.* 16.)

Instructions to the Land Office at Sault Ste. Marie, Michigan.

GENERAL LAND OFFICE, *April* 25, 1848.

GENTLEMEN: In the instructions from this office of the 16th instant, proof of a compliance with the conditions and stipulations of leases and permits, with visible landmarks and muniments as boundaries to the latter, are required of lessees and permittees, as pre-requisites to entries under the law, at the reduced minimum of $2 50 per acre. On examining the leases, you will perceive that the first condition specified therein, which seems to come within the purview of the law and those instructions, is, that "the mines, &c., shall be worked with due diligence and skill," and the second is the payment of the rent.

In relation to the first of these conditions I would suggest, that after the opinion of the Attorney General, given on the 18th April, 1846, that these leases were unauthorized by law, and the consequent refusal of the Secretary of War to carry out the regulations previously prescribed, some of the lessees did not work the mines. In such cases, the Secretary of the Treasury concurs in the opinion of this office, that the lessees should be permitted to enter to the extent of their lease, as set forth in your instructions, where the rent has been paid, as set forth in the second condition, and the following instructions:

The Secretary of the Treasury also concurs in the opinion of this office, that lessees and permittees who desire to purchase the lands embraced by their leases and permits, should not be required to pay rent after the time when, according to the terms of the act of 1st March, 1849, they could have done so, had the necessary facilities been furnished by the Government, by fixing the land office and appointing the land officers. Hence, the mineral agent was this day instructed, with the lessees and permittees, up to the close of navigation in 1847,

for all the ore and mineral raised up to that time, and require rent therefor, and for all raised since to require a bond to be given for the amount of rent, which will be cancelled upon the entry by the lessee or permittee of the land claimed by him, before the day fixed by the President's proclamation for the commencement of the sale, including those lands.

Where permittees, for similar reasons to the foregoing, have given the best designation practicable to the location of their permits, with reference to natural objects, leases, &c., with the lengths and courses of their boundaries, it will be considered sufficient as to the requirements of the law of fixed landmarks and muniments. The other stipulations are similar to those of the leases, and will be similarly construed as above directed.

In all cases where persons applied for leases and failed to obtain them because of the decision of the Attorney General and the consequent refusal of the Secretary of War to carry out the previous regulations, the persons who so applied will be considered as entitled to the same rights and privileges exactly as if they had obtained them.

The books of the mineral agent will enable you to ascertain all such cases; but should persons apply in relation to whom there is no such evidence, you will receive their application and hold it in abeyance till you can get information from this office in relation to it.

Very respectfully, your obedient servant,

RICHARD M. YOUNG,
Commissioner.

Register and Receiver, at Sault Ste. Marie, Michigan.

CIRCUIT COURT OF THE UNITED STATES,
For the seventh circuit and district of Michigan, ss:

I, John Winder, clerk of said court, do hereby certify the above and foregoing to be a true transcript of the original record of judgment in the case wherein James M. Cooper is plaintiff, and Enoch C. Roberts is defendant, of the bill of exceptions presented, signed, and filed in said cause, of the agreed statement of facts signed by the respective attorneys of the said plaintiff and defendant, dated "Washington city, April 17, 1854," and of a second agreed statement of facts signed by said attorneys, dated "June 24, 1856," with copies of all the papers in both of said agreements or stipulations, and in said bill of exceptions referred to; all of said papers having been carefully compared by me with the originals on file in this court, and being the whole of such original papers.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said court, at Detroit, in said district, this seventeenth day of November, in the year of our Lord one thousand eight hundred and fifty-six, and of our independence the eighty-first.

[SEAL.]

JOHN WINDER, *Clerk.*

DISTRICT OF MICHIGAN, *ss:*

I, Ross Wilkins, judge of said court, do hereby certify, that John Winder is clerk of the circuit court of the United States for the district of Michigan; that the seal annexed to the above certificate signed by him is the seal of said court, and that the above attestation is in due form.

In testimony whereof, I have hereunto signed my name officially, this ninteenth day of November, A. D. 1856.

ROSS WILKINS,
U. S. Judge for the District of Michigan.

Assignment of Errors.

Supreme Court of the United States—December term, A. D. 1857.

ENOCH C. ROBERTS, Plaintiff in Error,
vs.
JAMES M. COOPER, Defendant in Error.

And the said plaintiff in error complains and says, that the said circuit court, in proceeding to and rendering said final judgment, manifestly erred and mistook the law in the particulars following, (viz:)

1. In sustaining on the trial below the objection of the said defendant in error to the said deposition of John Wilson, offered by the plaintiff in error on said trial, and in excluding the same from the jury.

2. In sustaining on the same trial the objection of the said defendant to proof of said deed of release from Alfred Williams and wife to the Minnesota Mining Company, dated June 26th, A. D. 1856, covering the lands in controversy, and evidence of the other facts in connection therewith, (specified in said bill of exceptions,) offered by the plaintiff in error on said trial, and in excluding said deed and evidence of said facts from the jury.

3. In sustaining on the same trial the objection of the said defendant in error to evidence offered by the said plaintiff in error, to prove "that at the time when the said Cooper obtained the deed of the premises in controversy from Alfred Williams, the Minnesota Mining Company was in actual and open possession of the same, claiming title under their patent from the United States, and that the said Cooper knew of such claim and occupancy before and at the time of his purchase and of said conveyance; that he obtained said title from Alfred Williams, he being the naked trustee of John Bacon, and that all the negotiations for the said purchase and the purchase itself were had between said Cooper and Bacon, the said Williams acting under the directions and for the benefit of said Bacon, and having or claiming no personal interest in said lands; that said purchase and conveyance were made for the following purpose, namely: that said Cooper should hold the same in trust for a corporation known as the National Mining Company, all of whose stock was held by said John Bacon; and by the conditions of said sale the said Cooper was to receive, and did receive, with said conveyance six-tenths of the stock aforesaid, and the said Bacon was to retain, and did retain, four-tenths of said stock. That the said Cooper purchased said stock and took said conveyance with a full knowledge of the claims and occupancy of the Minnesota Mining Company, and with the intention of prosecuting the title purchased by him, by legal proceedings in this court against the Minnesota Mining Company for the benefit of the National Mining Company; and that before said conveyance was delivered to him by said Williams, the said Cooper, in conjunction with the said Bacon, applied to counsel, in the city of Detroit, to employ such counsel in the litigation aforesaid, which was to be had with the Minnesota Mining Company," and in excluding the same from the jury.

4. In instructing the jury on said trial, that " upon the evidence in the case, that if they found the same to be true, they should render a verdict for the plaintiff below."

5. In refusing on said trial to instruct the jury as requested by the said plaintiff in error, "that if they, the said jury, should find the facts given in evidence to be true, they should find a verdict for him," the said plaintiff in error.

6. In refusing on said trial to instruct the jury, "that if the land in controversy was surveyed subsequent to the act of Congress of March 1st, 1847, and was mineral land, the same was, by the said act, reserved and disposed of so that the right of the State of Michigan could not attach on said survey," as requested by him, the said plaintiff in error.

7. In refusing on said trial to instruct the jury, "that if the land in controversy was, at the time of the survey, covered by the lease to Joseph L. Hempstead, set forth in the case made, then the same was so disposed of that the right of the State of Michigan could not attach thereto on such survey," as requested by him, the said plaintiff in error.

8. In refusing on said trial to instruct the jury, "that if the lessees complied with the provisions of said lease, so long as the same, by its express terms, was to continue, and if they subsequently, and up to the time of proving their claim, complied with the instructions and regulations of the department at Washington touching said lands, then their rights were not terminated by the expiring of the lease by its original terms, but were protected under the act of Congress of September, 1850, and they had a right, upon making their proofs, to enter the land in controversy, and the State had no right thereto," as requested by him, the said plaintiff in error.

9. In refusing on said trial to instruct the jury, "that upon the facts appearing in the case, the Minnesota Mining Company having continued in possession under their lease and by permission of the officer of the department of the United States charged with the leasing said lands, and having in all things complied with the conditions of said lease, the said lease was in law validly extended, and the lands were so disposed of during said extension, that the right of the State of Michigan could not attach thereto," as requested by him, the said plaintiff in error.

10. In refusing on said trial to instruct the jury, "that the act of Congress of September, 1850, recognised and confirmed the said lease and the action of the public officers in relation thereto, and the lands so disposed of as to prevent the claim of the State of Michigan from attaching to the same," as requested by him, the said plaintiff in error.

11. In refusing on said trial to instruct the jury, "that if, when said Williams conveyed to said Cooper the premises in question, the said Minnesota Mining Company was in actual and open possession of said lands, claiming title thereto under their patent, the said conveyance was void in law against the said company, and all claiming under them," as requested by him, the said plaintiff in error.

12. In proceeding to render a judgment on the verdict of the jury in said case, that he, the said defendant in error, is the owner in fee simple, and that he do recover possession of the premises described in said verdict, including in said judgment every part and parcel of such premises.

13. In proceeding to render a further judgment on the same verdict, that the said defendant in error do have the writ of possession to put him into possession of the premises last aforesaid, including every part and parcel thereof.

Whereupon, and for other errors apparent on said record, the said plaintiff in error prays that said erroneous judgment may be reversed and set aside.

ENOCH C. ROBERTS,
By his Attorney, TRUMAN SMITH.